

BW394
B5

Bristol Chapel Case

1853

from the F. Haynes

RH

104

BW 394

B5

Wesley Memorial Library

Thursfield Smith Collection
of
Wesleyana



Atlanta, - Georgia

Wes. 1435

THE BIRSTAL CHAPEL CASE.

VICE CHANCELLOR WOOD'S COURT,

NOVEMBER 8TH, 1853.

ATTORNEY GENERAL *v.* CLAPHAM.

JUDGMENT.

THE VICE CHANCELLOR :—The principal question which arises in this case, is a question relating to the effect to be given to a deed, executed as long as a century ago; more especially, with reference to that part of it which speaks of the nomination of a Minister or Preacher to officiate in the chapel of Birstal, in the county of York.

The question seems to be one which excited considerable attention some seventy years ago, during the life time of the late Mr. Wesley; but, through the good sense and good feeling of the community at that time, matters seem to have been so arranged that all further controversy was at last silenced; and I think it is deeply to be regretted, that the same good sense and good feeling should not have prevailed up to the present time, so as to have prevented the necessity of any litigation in the Methodist Body, with reference to a question of this description at the present period. However, it becomes necessary to consider, upon the Information, which has now been filed, what is the true construction to be given to this original deed, and to the several other instruments which have been executed since that period, with reference both to this property, and to three other pieces of land which have been acquired since the date of the original instrument.

Now, the various points that are raised by the Information appear to be these. It is contended, by the informants, that, under the circumstances of this case, a chapel having been built at Birstal some short time,—a year or so,—before

the deed of the 3rd December, 1751, in the first place, that that deed, coming subsequently to the erection of the building, ought not itself to be considered as effective in disposing of the property mentioned in the deed, and that the trusts which are therein declared are not trusts declared by persons competent to dispose of the property in the manner in which it is there purported to be disposed of; but that the whole of the transaction must be treated as if in fact no such deed had ever existed;—that there was the simple circumstance of the property having been purchased and acquired for the benefit of the Society of Methodists;—and that a scheme should now be settled for the due administration of that trust. That is the first contention that arises in the case.

Secondly, it is alleged that, both with regard to this property, and with regard to the subsequently acquired property, as to which, I should also say, the same question arises as to the declaration of trust not being cotemporaneous, except as to the property purchased in 1843,—but it is alleged, both with respect to that property and other property, that the deeds which have been executed, first, do not adequately declare the trusts, even as matters stood at the date of the arrangement in question; and, secondly, if they do sufficiently declare the trusts at that period, nevertheless, there has been such a change of circumstances, with reference to the whole Body, that, looking to the general purport, and general effect and scheme and object of the parties who founded these charities, it is now necessary that there should be some new regulation, under the decree of this Court, of the charities which have been so founded.

Then, lastly, it is contended that, at present at all events, the trust, with reference to the appointment of a Minister, is one which is wholly inconsistent with the general constitution of Methodism,—nearly the same point as I last referred to,—and that that trust, at least, cannot prevail, and that some scheme, with reference to that portion of the trust, must be devised, in order that the trust may be fully and beneficially carried into effect under the direction of the Court.

Now, in opposition to this, the Defendants have contended, first of all, that the trusts were regularly created by persons

competent to create them under the original deed of 1751; secondly, they contend, that the trusts are adequately expressed in that deed, or at least if not on the face of that deed, that, taking into consideration the whole of the contemporaneous facts which existed at that time, the trusts are sufficiently ascertained, regard being had to the facts and circumstances which at the time existed; and that there is no necessity for any interference of the Court whatever with reference to the adjustment of those trusts; and, thirdly, they contend that, whatever construction be put on the deed, the trust, at all events with reference to the appointment of the Minister by the Trustees, who now represent the original Trustees of 1751, ought to be carried into effect, in the same manner in which they were originally declared, on the ground that, at the time when this chapel was founded, (as it is expressed in the affidavits of those Trustees who take a different view from the relators,) the Society of Mr. Wesley, although forming one joint body under the name of "The People called Methodists," yet, nevertheless, it was so arranged, that the local government, as they express it,—(it is not very definitely expressed—sometimes it is said the local government in temporal matters, and sometimes local government entirely,)—that the local government was always left to the particular Society itself; and that there was no interference or control on the part of the general body with reference to this local government, and that, therefore, it is perfectly consistent with the object of the deed, that the trusts which were originally created should be continued in them, and that they should have the sole local superintendence and appointment of preachers.

They say further, (and this is rather as rebutting some observations made on the part of the relators as to the impossibility of carrying this Trust into effect consistently with the scheme of Methodism,)—they say, further, it is not inconsistent with the scheme of Methodism, and that no difficulty exists in executing the Trusts as originally created; and that, in fact, there had existed, at different epochs, chapels founded on similar Trusts, and with the right of nomination similarly created and vested in Trustees.

Now, those are the principal points that arise between the parties. There is a subordinate and second point raised, on the part of the relators, which is this,—They say that, looking at the circumstances of this case, the Trustees who take a different view of the nature of these Trusts from that taken by the relators and the majority of the Trustees,—the five dissentient Trustees who take different views from the majority, should be removed from the Trust, and that upon two grounds,—First of all, that in truth they have never been properly constituted Trustees, in consequence of the insertion in the deed of 1782 of a new mode of appointing Trustees which was not contained in the original deed, and which introduced new parties for their selection, and which therefore has caused the succession of Trustees, if I may so term it, to have been unduly elected from time to time, and consequently, that there is a necessity for having new Trustees. Observe, that will apply to all the Trustees. Then the relators say, it will become necessary to appoint a wholly new set of Trustees, and in that case those parties would be rejected who take a view adverse to the charity. That is one ground. Secondly, it is contended, that, even if there had been a due appointment of Trustees, nevertheless, these Trustees having ceased to be members of the Society, and further than that, having now taken a view hostile to the Society, and associated themselves with bodies which are not now united with Methodist Societies, but are in opposition to them, are no longer fit and proper persons to be continued in the Trust. That is, however, a secondary part of this contest, which has arisen between the parties.

Now, with reference to the points thus raised, I first consider the point suggested in the Information and argument, namely, that, in consequence of this chapel having been erected by subscriptions collected from the Methodist Body, and at a period anterior by at least a year or so to the declaration of Trust itself, that it was not competent for the parties to that deed to declare the Trusts. Upon that point, I confess, I do not accede to the argument of the relators. I can understand there may be cases where a declaration of Trust is purported to be made at a very long interval after the foundation of the charity, in which the Court has said that it was not competent to parties, are merely

placed accidentally in the possession of power or authority long after the original foundation of the Trust, and when its purposes must be conceived to be well settled and ascertained, that it was not competent to persons accidentally placed in the legal control of the property, to declare the Trusts of that property, as to which they in fact have no more power with regard to the declaration of Trust than any other person who may not have the accidental advantage of being placed in the legal possession of the property itself;—that the trust would have to be ascertained by those who founded the charity, and not to be ascertained by the accidental circumstance of the expressed intention of others who came into possession of property long after its original foundation. But I think I should be carrying out that principle to a dangerous extent, if I were to hold that, with regard to cases of this description, where the money has been collected by the subscriptions of a variety of persons who cannot be supposed to meet together in a body and to declare the particular objects to which this money is to be appropriated,—if I find, almost contemporaneously with the original subscriptions and the original erection of the building, a certain number of persons who have been entrusted, at all events by the parties who raised the money by subscription, and who must be taken, with the knowledge of all these parties to have been entrusted with the legal possession of the property;—I say, it would be far too much to say, in such a position of things, that I am not to consider those persons who have legally been entrusted with the possession of the property, with the knowledge of all those entrusted with the administration of the Trusts of the charity, as having the power of expressing and declaring the will of those persons who so founded the charity with reference to those various objects. This would be a dangerous rule to adopt, even in a more recent case; but when I find all this has taken place a hundred years ago, when it is impossible or difficult to obtain in any case evidence with regard to all the exact circumstances that occurred at the period, it would be going far beyond any rule that has been laid down with reference to such declarations of trust with regard to charities, when they have not been contemporaneous with the charity itself, to say that, finding

these parties in possession of the property, and having power and control over it, and with the knowledge and consent of all interested in it, they were not competent, and must not be taken, to have expressed the will of those who so entrusted them with the management and disposition of the property itself. Therefore, if this deed be found clearly and distinctly to express its trusts, and if those trusts be consistent with the general scope and objects of the Society by whom it was founded, I should not have thought it was right in any way to interfere, simply on the ground of the deed itself having been executed a year or two after the erection of the chapel.

I come now to what is the more important part of the question before me. I have first to ask, whether or not, on the face of the deed itself, the trusts are adequately expressed, and that, without reference in the first instance to the external circumstances of the case. Now, upon that, I think, there can be but one answer. It is quite clear that nobody, reading this deed alone, would be able to arrive at the exact purpose and object for which the charity was founded. In the first place, the deed contains no recital whatever of the parties concerned in the foundation. There is not the least mention of who the parties were who had taken part in the erection of this chapel. All that one is informed of by the deed is, the simple fact, that there is a building erected upon the property, and which has been lately erected, which is called the New Meeting-house, and which is in the occupation of one John Nelson, of whom one knows nothing by the deed, except the mere fact of his name being mentioned in the deed. Looking at the deed alone, and that it is intended that some persons or other shall be employed to act as preachers or Ministers, which preachers or Ministers, during the life of three persons therein named, are to be appointed "to preach and expound God's Holy Word in the same manner, as near as may be, as it is now preached and expounded,"—that very reference alone is sufficient to show that the Court must look at external circumstances, and cannot arrive at the Trusts from the deed itself. The Court knows nothing from the deed of how God's Word was then preached and expounded. It knows nothing of who these Ministers were.

And there is a further reference—"That every such preacher or Minister, from time to time, to be appointed as aforesaid, so long as he shall continue in his said office, shall preach or expound twice every Sunday, Christmas-day, New Year's-day, and Good Friday, to wit, in the morning and again in the evening, and once every Thursday, in the evening, in or at the place aforesaid, as has been usual and customary to be done." Therefore, it is perfectly clear, that one must look at the surrounding circumstances, which one is entitled to do in the construction of any deed which existed at the time of the foundation of this charity in order in any way to arrive at the mind of the Founder. Well, that being so, I propose first of all to look at the surrounding circumstances, in order to see how far one can arrive at the mind of the Founder, and then one might arrive at the question of how far the mind so expressed, applying the expressions of the deed to the state of circumstances existing at the period when the deed was executed, is such as gathering, in the first instance, the whole scope and intention of the deed from the assistance derived from the existing circumstances, that general scope and purpose can be carried into full and complete effect, looking at the pervading object and purport of the deed, and the change of circumstances which has since taken place; and, that one is to be at liberty so to regard the matter with reference to a foundation of this description, I should not have had the least doubt, even if I wanted the confirmation of that view which I derive from the judgment of the Vice-Chancellor of England in Dr. Warren's case, in which I think he has clearly expressed the rule which the Court may safely adopt for the construction of instruments of this description, when he says, "It is to be observed, that the deeds of trust are not, according to my humble apprehension, to be construed merely with regard to the words that may happen to be contained in the deeds themselves, but must be construed and looked at, as parcel and part of the whole machinery, by which the great body of Wesleyan Methodists, amounting to, I believe, nearly a million of people, is kept together, and by which Methodism itself is carried on. I think I should take a very narrow view of the case, if I con-

tented myself with merely looking at the words of the trust-deed, and not going further, and considering whether, from the very nature of the transaction, and the matters connected with it, some circumstances extrinsic of the deed must not be taken into consideration." He then refers to the view of Lord Eldon in the case of the *Duke of Bedford v. the British Museum*, as showing that circumstances may arise which of necessity, in some degree, vary the exact expression of the deed, with reference to what must have been the implied agreement and understanding between the parties, even although one of those matters may not appear on the face of the instrument itself.

Now then, looking at the transaction in this point of view, I have to consider the exact history of the Founders; if I may so term them, of this particular charity; and, looking to the charity, I have come to the conclusion which I will state first, and then will briefly allude to the passages which seem to me to bear out that conclusion in the different books and documents which have been placed in evidence before me,—I have come to the conclusion, that, first of all, this charity was founded by certain persons, who had been originally gathered together by the ministrations of John Nelson, some eight or nine years previously to the foundation itself; that these persons, so gathered together by John Nelson, had been united, through his instrumentality, with a larger association which had been formed by John Wesley, and which has been commonly known, from his time, by the general definition of "the people called Methodists;" that considerably before the date of this deed, John Wesley, who originated this larger association of the whole Methodist Body, had so far recognised that Body, that he had divided the Body, first of all into small divisions called classes, each of which had a leader,—that several of these classes were formed together into what was called a society,—and that there existed at Birstal a body so called, a society of "the people called Methodists," which, in fact, was the very body that had been thus gathered together by John Nelson, and who must be considered, as it appears to me upon the whole of this evidence, to be the founders of this particular chapel. These societies were further organised by Mr. Wesley in this

manner. Before the foundation of the deed, it is quite plain, that several Societies had been put together in a larger body, called a Circuit, and also, before the foundation of this deed, it had been the habit and custom of Mr. Wesley to send down,—originally I should collect he had taken the sole charge into his own hand,—but afterwards to send down, with the advice and assistance,—not as he expressly says under the control,—but with the advice and assistance of a number of persons whom he called annually together, and whom he designated before this period “the annual Conference.” It had been his custom, to send down, to every Circuit, certain Ministers; and those Ministers or preachers sent down to the Circuit had always one presiding Minister or preacher, who was called the Assistant, and this Assistant, with the other preachers, one or more, as the case might be, who were sent down to the Circuit, were the persons who alone, as it appears to me, officiated at the various chapels on the Circuit, in the nature of what are called Ministers, as distinguished, as it appears to me, from the persons who might occasionally preach in the particular District,—*District* is a wrong word, because it is used as a technical word, but in the particular localities, and who were afterwards called Local Preachers. The Society at Birstal, some time anterior to this deed, had been united with other Societies in the neighbourhood into what was called a Circuit; and I suppose, from being the principal place on the Circuit, that Society has been called the Birstal Circuit, and to this particular Circuit Preachers and Ministers had been sent in the manner I have described.

Now, founding myself upon that,—I shall have to state the evidence upon which I have no doubt that, in the construction of the deed, I must regard this meeting-house as having been erected for the purpose of enabling the Society to meet for its devotions and its other religious exercises, in a constant state of association with the whole Methodist Body in the first place, and in particular association with the Circuit of which it formed a part in the next place, and that the preachers or Ministers were to be Preachers or Ministers who should not be confined in their ministrations to the particular locality at Birstal, but who should be Preachers or Ministers appointed to the Circuit.

in the manner in which I find, anterior to the date of this deed, the Ministers or preachers had always been appointed to this particular Circuit; and I think I have derived conclusively from the evidence in this case, that the preachers or Ministers were to be of this description, as distinguished from the Local Preachers; because I find that not only John Nelson himself, who was in possession of the meeting-house when the deed was founded, afterwards did not continue to be confined to this meeting-house, but himself acted as an assistant, and went about on other Circuits. Among others, I find him about this period, sent on one occasion to the Leeds Circuit. Further than that, I do not find anywhere the term Minister applied to the position of a Local Preacher. Beyond that, there is this circumstance, that the deed provides for the residence of the Minister. The residence was evidently on the spot at the time, which was intended for the preacher, and there is no instance, that I can find, of any of the Local Preachers being accommodated with a residence. It is sworn in the affidavits on the part of the relators, and not contradicted by any of the affidavits, that I can find, on the part of the dissentient Trustees, that no Local Preacher has any residence provided for him; it being the character of the Local Preachers that they are persons exercising other trades and other callings, but who feel themselves called upon to expound God's Word, and to maintain themselves by those trades and callings, and are strictly confined to the particular locality in which they may be placed, and are not, if I may so express it, a part of the general system by which spiritual ministrations were made to circulate throughout the whole Body of the Wesleyan Connexion, from place to place, under the ministration of the regular preachers or regular Ministers.

Now the grounds upon which I have arrived at that conclusion are to be found in the history of this Society up to the period of 1751, which is, of course, the period that I am in the first instance bound to look to.

Now, I observe in this book, which is called Myles's Chronological History of Methodism, which is propounded by the Defendants,—and they therefore can scarcely object to my taking any citation from it as being correct,—it is pro-

pounded by the Defendants as being a correct history of the rise and progress of Methodism, and I find in it several interesting particulars not contradicted in the rest of the evidence, and it is evidence put forth by those Trustees who take a different view from the rest of the Trustees, and a different conclusion from that which the Court has arrived at. I learn, from page 14, that there is a description by Wesley himself of the origin of the Society which he has thus established. He says,—“In the latter end of the year 1739, eight or ten persons came to me in London, who appeared to be deeply convinced of sin, and earnestly groaning for redemption.” Then he proceeds to state they met together with him, “and desired, as did two or three more, the next day that I would spend some time with them in prayer, and advise them how to flee from the wrath to come, which they saw continually hanging over their heads. That they might have more time for this great work, I appointed a day when they might all come together, which from thenceforward they did every week, viz. on Thursday in the evening. To these, and as many more as desired to join them, (for their number increased daily) I gave that advice which I judged most useful for them, and we always concluded the meeting with prayer suited to their several necessities.” Then the author here observes “This was the rise of the Methodist Society first in London then in other places.” That appears to have taken place in 1739. But in 1742, it appears that the Society had greatly increased, that they were divided into classes, and that each class consisted, as I have stated, of some twelve persons or more, and that they were committed to the care of one person, called the Leader, and now, on the 15th February, 1742, John Wesley himself states what occurred with reference to moneys being raised by these classes, and I think it is of considerable importance in tracing the origin of this charity which is now in question. Mr. Wesley says,—“Many were met together at Bristol, to consult concerning a proper method of paying the public debt contracted by building,”.—“the public debt contracted by building,” shewing, in the first place, that the building concern, which relates to chapels and chapels only, was considered in this early period of 1742 as something belong-

ing to the general body of Methodists;—"it was agreed, first, that every member of the Society that was able should contribute one penny per week; second, that the whole Society should be divided into little classes or companies, about twelve in each class; third, that one person in each should receive the contributions of the rest, and bring it in to the Stewards weekly. Thus begun," says he, "that excellent institution merely upon a temporal account, from which we reaped so many spiritual blessings, that we soon fixed the same rule in all our Societies." Now the word "Society" is used in the singular number, and seems to have had a technical sense, and this may be referring to the particular Society at Bristol; but whatever might be the case, that course which he there pointed out, if it were with reference to a particular Society or not, very soon became the practice of the general Society. There very soon arose a plan of collecting weekly, from the different members in each class, their penny subscriptions, which penny subscriptions seem to have been a great instrument in the erection of all the various chapels throughout the association.

Now, soon after this date of 15th February, 1742, we find the system of giving Tickets commenced. That system appears to have commenced in March, 1742. Now the Ticket has become an extremely important part of the order, if I may so call it, of Methodism, because on the possession or non-possession of this Ticket appears now to depend the title of a person to be enrolled in this Body. It is stated thus in the Chronological History—"In this year commenced also, in London, the visitation of the classes once a quarter, by the preachers, which gives them an opportunity of conversing four times every year with the people concerning the state of their souls, as also of ascertaining who continue to be real members, by giving to each person a Ticket, with a text of Scripture on it, as a mark of their approbation. This is now universally practised, and the ticket is the same in every place. On the Band Tickets the letter B is marked." The Band was a special selection of persons, eminently distinguished, for their piety, from the common class.—"The increase of the Societies, together with the probable supposition that improper persons would endeavour to come among them, led

to this prudential measure. The following is the form of the tickets." It appears there is a text written on them, and the member, having received his ticket, is considered to be duly enrolled in his class; and the Class Leaders, as one finds from the subsequent rules, are directed to consider no one as belonging to the class who was not in possession of a ticket. The Society, therefore, as early as 1742, nine years before the date of this deed, had acquired considerable consistency in its form; and Mr. Wesley, throughout his life, evidently had for his great object the continual keeping up of this Society as one united Body, and the organization of definite administration for its regulation and government; and any one will see how gradually all this arose until, when we come to 1751, the date of the deed, we shall find the whole system of Societies and Circuits, and preachers travelling through the Circuits, had been duly and regularly organized.

Now, we find the first mention of Mr. Nelson's acquaintance with Mr. Wesley is noticed in a journal of Mr. Wesley—the first mention of it occurs on the 26th of May, 1742. "On the 26th of May, 1742," it is stated thus in the Chronological History, and I refer to the passage in Mr. Wesley's Journal,—that Mr. Wesley visited Birstal in the West Riding of the county of York, where he met with a lay preacher, Mr. John Nelson, who was instrumental in turning many of his neighbours from darkness to light." After some time, Mr. Nelson, who heartily joined Mr. Wesley in his work, published a Journal of his travels and Christian experience,—which Journal has been put in evidence in this case, and I have it here before me. Now, Mr. Wesley having thus seen Nelson in 1742, it appears quite plain from the evidence, that, from that time forward Mr. Nelson was not only firmly attached personally to Mr. Wesley,—for he had been first moved to consider his own conduct in life, and stirred up to preach to his neighbours, by having heard Mr. Wesley's powerful preaching in London,—and he not only became devotedly attached personally to Mr. Wesley, but he entirely united himself to him, with reference to the system of Methodism with which Mr. Wesley was established; and, accordingly we find at a very early period,—the first Conference having taken place in 1742,—

we find that before the date of this Indenture of 1751, in the year 1747, Mr. Nelson, although a layman, was called in by Mr. Wesley to assist at the Conference that then took place in London. Therefore, there can be no doubt, as far as Mr. Nelson himself is concerned, that he had associated himself, before the date of this Deed, with the Methodists as a Body. Now, further than that, we find him treated as an Assistant throughout. We find him termed his "Son in the Gospel." That phrase he applied to various Assistants. We find him, in the subsequent year, appointed by Mr. Wesley, with the sanction of the Conference, to officiate, as what was then called an Assistant, not in his own Circuit at Birstal, but at Leeds. Therefore, as far as regards Nelson himself, there can be no doubt of his full and complete union with Wesley, in all the system which he was at this time bent on establishing.

Now, having disposed of the exact position of Nelson with Mr. Wesley, let us proceed to consider what took place with reference to the Association, or the congregation formed by Mr. Nelson. Now it appears, from entries in Wesley's Journal, that Wesley, in the year 1747, went himself to Birstal, and that by an entry in his Journal of the 26th of April and the 27th of April, 1747, which will be found in the volume here before me, he makes this note—"Preached at Birstal, and regulated the Societies." It is quite plain, therefore, that, as early as 1747, Mr. Nelson's congregation had been formed into what was called a *Society*. It is further plain, that there were more Societies than one, and that these Societies had been regulated by Mr. Wesley.

Well, then, the next circumstance of importance which takes place,—having first found that Nelson distinctly associated himself with Wesley, and that his congregation had been placed by Wesley as one of his Societies,—the next thing of importance is, the uniting of several of these Societies into Circuits. Now, it appears by the same book I have before me, at page 45, that these Circuits were first mentioned in the Conference that took place in 1746.

I ought briefly to state, with respect to the Conference, that it began by Wesley, in 1744, asking certain Clergymen of the Church of England to meet him in London at the Conference; and at that Conference, after a slight discus-

sion, they came to the conclusion, that some laymen might also be introduced, those laymen being what he called his "Sons in the Gospel," and who were to assist him in the system he then adopted. That was the origin of the Conference; and, from time to time, down to the present year, there have been assembled Conferences of Preachers or Ministers in this Connexion.

Now, it appears that, in the year 1746, which was the next step, the Societies were united into Circuits. It is mentioned in the 45th page of the Chronological History which I have. There seems to be a somewhat fuller report given, in question and answer, which is the usual form of the proceedings of the Conference,—a somewhat fuller report of the proceedings of the Conference than I find in the Minutes of the Conference themselves. The question is, "How many Circuits are there? A. Seven. 1st London, which included Surrey and Kent,—2, Bristol, which included Somersetshire, Portland, Wiltshire, Oxfordshire, and Gloucestershire,—3, Cornwall,—4, Evesham, which included Shrewsbury, Leominster, Hereford, Stroud, and Wednesbury,—5, York, which included Yorkshire, Cheshire, Lancashire, Derbyshire, Nottinghamshire, and Lincolnshire." Therefore, in 1746, the Birstal Society, or those in the neighbourhood, had not become of sufficient importance to form at that time a Circuit of themselves. But a short time afterwards, and before the foundation of this charity, we find distinctly, that the further subdivision of Circuits had taken place; and I think it was in the year 1749, that the Circuits became subdivided into twenty Circuits, and the fifteenth of those Circuits is described as being the Birstal Circuit. This appears from the Minutes of Conference. At pages 39 and 40, there is this—"How many Circuits are there now? Twenty in England, seven in Ireland, two in Scotland, and two in Wales." It enumerates the various Circuits, and the fifteenth of them is Birstal; and that Circuit seems to have continued as a Circuit from that time down to the present. This must have been the very time at which subscriptions were collected to erect that chapel,—about the particular period of the chapel itself being erected.

It is quite clear, therefore, we have these several facts. You have Nelson, who had gathered together the congrega-

tion attached to Wesley as one of his sons in the Gospel ; you have the congregation formed into a Wesleyan Society ; and you have that Society united with several other societies into a general Circuit, called the Birstal Circuit.

I have, of course, to consider who are meant by Preachers or Ministers. Now, in going through the early history of this case, it appears that Mr. Wesley, in the first instance, associated with himself, as much as possible, Clergymen of the Church of England. In truth, down to almost the latest period of his life,—at all events down to the period of his assuming the function himself of ordaining Ministers,—down to that period, Mr. Wesley had no intention of severing himself from the Church of England ; but, in the most ardent and earnest manner, protested against any such severance, as being a thing to be deplored ; and for some time there was a scruple, even as to the employment of Lay assistants, However, that scruple had been clearly overcome before the foundation of this charity ; and it appears, without going through the earlier part of the progress of Methodism, that in the year 1749, a very distinct definition of what the duties of the several office bearers, if I may so describe them, in Methodism were. It is in the Minutes of Conference at page 39, that I think that occurs. There is an important entry in 1746. It appears that, before 1746, persons had been appointed who were called Assistants, and those Assistants were the same persons as were called his “ *Sons in the Gospel* ;” but after this, they wanted further aid, and they called in to their aid a new class of persons, called *Helpers*, who afterwards became what were generally called the Preachers. Now I do not find any distinct account of the Institution of Helpers before 1746, but, in 1746. I find this question, in page 30 of the Minutes of Conference. It is asked, “ What method may we use in receiving a new Helper? A. A proper time for doing this is at a Conference, after solemn fasting and prayer. We may then receive him as a probationer, by giving him the Minutes of Conference inscribed thus—‘To A. B. You think it your duty to call sinners to repentance: make full proof hereof and we shall be glad to receive you as a fellow labourer. Observe, you are not to ramble up and down, but to go where the Assistant directs, and there only.’” Now, tracing the

rule of Methodism, from this period downwards, you find that the persons called "Helpers" were afterwards called Preachers; that they were afterwards admitted in this form; they were first called Probationers, and, after they had gone through their probation, the Probationers were admitted to be Preachers, and, after they were Preachers, they were appointed to various Circuits to be itinerant Preachers, and subject to the Preachers called "Assistants." Then it is said—"Let him then read and carefully weigh what is contained therein, and see whether he can agree to it or not. If he can, let him come to the next Conference, where, after examination, fasting, and prayer, he may be received into full connexion with us, by giving him the Minutes inscribed thus:—'So long as you freely consent to, and earnestly endeavour to walk by, these rules, we shall rejoice to acknowledge you as a fellow labourer.'"

Having, therefore, got this institution, both of Assistants and Helpers, we find, in the year 1749, the duties of these persons very clearly defined. First of all, there is an important question asked, in 1749. It occurs in page 39 of the Minutes of Conference:—"Can there be any such thing as a General union of our Societies throughout England?" Observe, they had been formed into Circuits, but there does not appear to be any distinct operation, between Circuit and Circuit, for bringing them into one large body,—“Can there be any such thing as a General union of our Societies throughout England? A. A proposal for this was made some time since. This substance of it was this:—May not all the Societies in England be considered as one body, united by one spirit? May not that in London, the Mother Church, consult for the good of all the churches? May not the Stewards of this answer letters from all parts, and give advice, at least in temporals?”.....“Q. But how can the state of all the Societies be known to the Stewards in London? A. Very easily by means of the Assistant.”.....“Q. Who is the Assistant? A. That preacher in each Circuit, who is appointed, from time to time, to take charge of the Societies, and the other preachers therein.” Therefore, the duty of the Assistant is very clearly and distinctly laid down, anterior to this deed, to be, that the Preachers, on each Circuit, appointed from time to time, are to take charge

of these Societies, and the other preachers therein. Then there is a question,—“How should an Assistant be qualified for the charge?” which it is not necessary for me to read. Then “What is the business of an Assistant? A. 1st, To see that the other preachers on the Circuit behave well and want nothing,—2nd, To visit the classes quarterly in each place, regulate the Bands, and deliver new tickets.” Then there are other things, such as keeping “Watch-nights and Love-feasts.” “4, To take in or put out of the Bands or Society,—5, To hold Quarterly Meetings, and therein diligently to enquire both into the spiritual and temporal state of each society,—6, To take care that every society be duly supplied with books, and that the money for them be constantly returned,—7, To send from every Quarterly Meeting a circumstantial account to London of every remarkable conversion, and of every one who dies in the triumph of faith,—8, To take exact lists of the societies every Easter, and bring them to the next Conference,—9, To meet the married men, the married women, the single men, and the single women, in the large societies; once a quarter,—10, To see that every society have a private room, and a set of the library, for the Helper,—And, 11, To travel with me if required once a year, through the societies in his Circuit:”—which were established by Wesley. First, these Assistants are called by Mr. Wesley “sons in the Gospel;” they seem afterwards to have had considerable power; but they are always under his control;—they are to go about to do what he had previously done himself to regulate the societies; and Quarterly Meetings were appointed for this among other purposes. Then there is a question asked,—“But has the office of an Assistant been thoroughly executed? A. No, not by one Assistant out of three. For instance, every Assistant ought first to see that the other Preachers behave well. —But who has sent me word whether they did or not?” He complains a little of their not having the various purposes which he suggests.

I have therefore here very definitely the class of persons who founded this chapel, as I have already described;—I have here very definitely the class of persons they were used and accustomed to, —namely Preachers sent round to these Circuits, and governed and superintended

by an Assistant, which Assistant assigned to them their several and respective duties upon the Circuit. Looking to the state of things, I do not find any very distinct trace of the Local Preachers. The Local Preachers were, at all events, a body who, from the evidence given here, appear to have been persons carrying on their own trades, not undertaking the general ministry in the various chapels and places, and not called upon to attend at the meetings of Conference at any time, and not going through any of those formal admissions which we see applied to the general Preachers and Probationers. And we have one passage in the Rules of the Society, which, I think, is of some importance with reference to this duty of the Ministers. With regard to the Rules of the Society they seem to have been framed anterior to the calling of the first Conference. They appear to have been framed by the two Wesleys, in conjunction, and they are stated in the Chronological History, at page 20.—In the year 1743, May the 1st, the Rules of the Society were first published.—They were published under this title “The Nature, Design, and General Rules of the United Societies in London, Bristol, and Newcastle-upon-Tyne, &c.” Then, after stating the rise of the societies, there is stated this, “It is the business of a Leader, First, To see each person in his class once a week at the least, in order to enquire how their souls prosper” and so on; “Second, To meet the Ministers and Stewards of the Society every week, in order to inform the Minister of any that are sick, or of any that are disorderly, and will not be reprov’d, to pay the Stewards what they have received of their several Classes in the week preceding.” There you find the word “Minister,” and certainly it has not been contended by any one, that those who are called Local preachers performed any duties of such a description as were performed by those who are called the Ministers of the Society. There may be several Local Preachers at any one place, and there appears to have been no one of them who had ever had that definite position which is here described, as being the officiating person of the particular Society, who is to meet the parties in their Classes, together with the Steward of the Society, according to the original rules of the Society. Those original rules, fortified as I think they are by all that took place at the subsequent

meetings of Conference, clearly appear to me to show, that I should be wrong in applying the term Minister to any one else than that class of itinerant preachers who are sent about, in the manner I have described, on these various Circuits, under the superintendence of one particular person called the Assistant.

Having arrived at this stage of inquiry, I think one finds no difficulty now, looking at all these surrounding facts which existed in 1750, in construing the provisions of the deed itself. The provisions of the deed speak of there being a new preaching-house, under John Nelson. Who was he? A person associated, as Assistant Preacher, with Wesley, and presiding over a Society of Wesley's, which Society was united with the Birstal Circuit. Provisions are then made for the appointment of a Preacher or Minister, that Preacher or Minister is to be first appointed by John Wesley, then by Charles Wesley, by Grimshaw after those two, and then, (what has given rise to the controversy,) by the Trustees, monthly or oftener, (I think the expression is,) as they shall think fit. Still, whoever appoints, the person is to be a Preacher or Minister. And, during Wesley's lifetime, it was quite natural to say it should be under his appointment, because, although, in truth, he recognised this large and extensive machinery, yet it will be found repeatedly, in his letters, that, down to 1784, he very vigorously controlled the whole Society by his own direction, and positively refused to acknowledge that anybody had authority or control over him, and he said, that is the simple condition on which you are Methodists,—if you are Methodists submit to me,—if you do not submit to me,—you accuse me (as he says in one of his letters) of being a Pope, exercising arbitrary power; all I can say is, if you like me and all my plans, consent and join me; if you do not, stay away. That is the way that he asserts his own arbitrary control and authority, acting only on the advice of his Conference. That being so, one naturally expects to find John Wesley's name, and it will presently appear how the other names came to be associated; but, whoever the parties were who were to appoint, the Preacher or Minister must, beyond all doubt, be a Preacher or Minister qualified to officiate, and duly appointed to officiate within the Birstal Circuit.

Then, let us consider how it is, if this were so, that the deed creates the difficulty which arises on this question, with regard to the particular mode of appointing this person who was to be such a person as I have described.

However, before going into that, I ought not to omit what has been very much relied upon—the letter of John Nelson; I think more than is necessary for the relators in this case. I think the other facts are so extremely clear, that the case did not require the aid of that letter. But I should not omit noticing the remarkable letter of Nelson himself which refers to the foundation of this charity, which he writes on the 29th of August, 1750, to Wesley, only a few months before the deed was executed, stating that—“the Stewards and Trustees of the chapel we are building, and which is now slated, desire you to give them advice how the writings must be made, which are to convey the power into the hands of seven men, to be as Trustees, and for what use the house and ground are to be employed.” Now, nothing can be clearer, upon the face of that document, than that the chapel had been built by persons called Stewards, by persons connecting themselves with Wesley and Nelson, asking advice, on behalf of himself, of Wesley, how the matter was to be arranged. Whether they were bound strictly to follow that advice might be, in some sense a question, with regard to anything which did not oppose what then existed as part of the system and regulation of Methodism. That is what has constituted the principal difficulty in this case; for, up to this time, it appears to me, that John Wesley had himself the whole control. I do not think, upon the evidence, that at the date of the foundation of this chapel, anything definite had been provided, as to how things should be carried on after the death of John Wesley. And, therefore, it might well be that, acting on his advice, as to how the matter should be conducted during the period of his own life, they might possibly entertain a different view of how matters should be conducted after his decease, always bearing in mind, that the primary object was the appointment of Ministers or Preachers of the Methodist Connexion.

Then, what took place as to the particular form of this deed is plain, when one comes to look at the

government of this Society, at this period, and the recommendations made, from time to time, by Wesley, with the assistance of the Conference. We find in 1749, just before the date of this deed, that the Conference had taken into their consideration—I should rather say a question, which the Conference had taken into consideration, was,—the subject of Trust Deeds, with regard to chapels, and, accordingly, in the Minutes of Conference of 1749, at page 41, this question is asked—"What do you advise with regard to public buildings? A. First, let none be undertaken without the consent of the Assistant. Second, Build, if possible, in the form of Rotherham-house. Third, Settle it in the following form:"—thereupon an Indenture is set out, which purports to be an Indenture conveying to a certain number of Trustees,—the number would not be considered very material—"upon special trust and confidence, and to the intent, that they and the survivors of them, and the Trustees for the time being, do and shall permit John Wesley, late of Lincoln College, Oxford, Clerk, and such other persons as he shall from time to time appoint and at all times during his natural life, and no other persons, to have and enjoy the free use and benefit of the said premises." Secondly, that he, Wesley, and such persons as he may appoint, shall "preach and expound God's Holy Word." And, after his decease, there is exactly a similar trust with reference to a gentleman of the name of William Grimshaw, a clergyman of the Church of England, who seems to have taken great interest in the affairs of this Society. "Then upon further trust and confidence," (that is after the decease of the survivor of the three parties,) that the Trustees "or the major part of them, or the survivors of them, and the major part of the Trustees of the said premises for the time being, shall, from time to time, and at all times for ever thereafter, permit such persons as shall be appointed at the yearly Conference of the People called Methodists in London, Bristol, or Leeds, and no others, to have and enjoy the said premises for the purposes aforesaid." Then there is this proviso "Provided always, that the said persons preach no other doctrine than is contained in Mr. Wesley's Notes upon the New Testament, and Four

Volumes of Sermons. Provided also that they preach in the said house ——— evenings in the week, and at five o'clock on each morning following; and upon further trust and confidence,"—which upon the second branch of this case is also important,—“that as often as any of these Trustees, or of the Trustees for the time being, shall die or cease to be a member of this Society, commonly called Methodists, the rest of the Trustees or of the Trustees for the time being, as soon as conveniently may be, shall and may choose another Trustee or Trustees, in order to keep up the number of nine Trustees for ever.”

This is the rule laid down by the Conference with reference to any future chapel that may be built. Now, at this time this particular chapel, in 1749, was in the course of its erection. I do not find that this rule was altogether strictly and positively enforced, as far as I can make out, as a *sine quâ non* of Methodism at this particular epoch of 1749. No doubt it was a strong recommendation on the part of this body of what should be done after the death of the survivor of the Wesleys and Grimshaw, but you find in several places, but more particularly mentioned in Wesley's own note to the Conference in 1766, a long statement by him of the exact relation which he conceived to be existing between him and the Conference, and you find subsequent letters of his, scattered throughout the book, and which are not necessary to be detailed, of this description,—I always intended myself to act solely, with the advice and not under the control of the Conference. I wished to accustom my people (the expressions occur) by degrees to act under the Conference after my decease. That frequently occurs in Wesley's letters and documents. I did not find so much difficulty with the preachers, but I always anticipated more difficulty with the laity. In fact, Mr. Wesley no doubt foresaw that, strong as his personal influence had been, and great as had been the commanding power of his vast talent for administration which he seems to have possessed, there would come a time when, from that innate propensity, which appears to exist in the people of this country, of governing themselves, there would be a difficulty in getting people to submit to any particular body he might dictate, unless he had taken care to secure this object by

gradual steps and gradual measures, which might be taken by him during his own life time. He does not seem to have adopted that course in this regulation which was laid down here. It comes forward, as a distinct recommendation of what is to be done as to all chapels that should be built in future. This particular chapel was in course of erection and in the progress of building; and I cannot find, from anterior circumstances, that all the provisions of this deed had at any time been strictly insisted upon as a *sine qua non*. It does appear in evidence, that there were existing several deeds, although very few, giving the Trustees the power of nomination. There were several deeds requiring Trustees to be members of the association.

Now, it is argued, on the part of the Trustees who take a dissentient view from that of the majority, and no doubt with considerable force, and that was put strongly by Mr. Cairns, that when you look at this deed, and when you look at John Nelson's letter, and see the exact deed which has been drawn, it is extremely difficult to conceive that this deed was not before the parties who prepared the deed of 1751; and I certainly, for my part, acquiesce in that view. I think it almost impossible to conclude that they had not this deed before them at the time the deed of 1751 was prepared, because it tallies in so many respects, although it differs in essential points. There is the appointment by this deed to John Wesley, to Charles Wesley, and to Grimshaw; and then, with this exception, that we find the words "no other" omitted. The very circumstance of this small omission shows, that it was more a deliberate omission than otherwise. And then, further than that, we find the provision which has given rise to this suit, the appointment after the death of Grimshaw; and we find further, the omission of that clause, that the Trustees must necessarily be members of the association. I cannot help, therefore, coming to the conclusion, that when this deed was framed, being of opinion, on the ground I have already mentioned, that the Minister must be such as I have described, and one of the itinerant, not one of the local Preachers, I am bound also to say, that I think the parties framing this deed did intend not to leave, after the death of the survivor of those three parties, the nomination to the Conference; but that they intended, if that could be achieved,

to transfer the appointment to trustees to be nominated under this deed. Now, the really main question will be, whether or not, taking the whole deed into consideration, and the circumstances which have since occurred, such an intention can, under the existing circumstances, be carried into effect ; but that they had that intention I think I am bound to conclude from all the evidence here placed before me. The account that Mr. Wesley gave of it, when the disputes afterwards arose, which I shall advert to presently, is this,—that Nelson, being an ignorant man, permitted this deed to be framed in this manner. I think it is extremely probable that Nelson, who seems to have been a man of a deeply spiritual mind, and immersed in his spiritual calling, did not pay much attention to these temporal matters. At the same time, I must, for the reasons I stated in the outset, be of opinion, that the parties who had raised this question did entrust, and must be taken to have entrusted, to the parties who prepared this trust-deed,—this large body of nineteen persons whom they allowed to be vested with the legal estate,—I must presume them to have been selected by the persons who subscribed to this chapel, and to have been vested with the trusts, in such a way as, of course, to preserve the paramount object of the whole charity.

The difficulty, then, that arises is,—What is to be done with reference to a declaration of trust of this description, quite definite and precise, that the Trustees shall nominate and appoint one or more fit person or persons to preach ? Looking to the fact, that the person to be appointed must be a person itinerating, and a Minister of the Circuit, and must therefore be a person qualified and duly appointed a Minister throughout the Circuit, the conclusion I have come to is this, that although, at the time of this deed, the matter was still a question in abeyance, as to how the Society would be governed and directed after Mr. Wesley's death, still, that the paramount intention was, that this Body should be for ever associated with Methodism, so long as it continued, and should be governed and directed by the general rules of Methodism. Now, I know that that expression which occurs in the information was considerably cavilled at—it was discussed a good deal by the Solicitor-general in his argument ;—and, reading this paragraph 43, which says,

“The paramount intention of the parties concerned in the purchase and erection of the Preaching House or Chapel comprised in the conveyance of 1751 was, that the same should be held and appropriated by the Trustees for the time being, as a Methodist Chapel, and in accordance with the constitution of Methodism,” he contended, in the first branch of his argument,—afterwards, I think, he put the case somewhat less strongly, but Mr. Craig, however, followed up the original argument of the Solicitor-General to the fullest extent, and contended, that there was in truth no such constitution of Methodism to be taken in this general sense, by which there could be a general superintending control, but that these local bodies had their local government, and were unimpeded in respect of that local government by any central control. Now, it is satisfactory to me to find that, in the affidavit of the dissentient Trustees themselves, Mr. Fawcett and others, they take a somewhat different view of this case. Perhaps I may say, in some degree the affidavit is somewhat inconsistent with itself for, although they set out with saying that the Local Preachers have been the chief instruments in the Methodist Connexion of acquiring and occupying the ground, and so on,—yet they speak of the number of Local Preachers, and they speak also of the local government being entrusted to the local body; they speak also, in the first place, of these various Societies and Circuits, which is at once a departure from the system of mere local government, because the Circuit is a larger branch, and therefore with regard to the constitution of Methodism they use the expression to which an objection is raised by the Solicitor-General; and, after stating the articles of Pacification of 1795, they proceed to state the regulations of 1797, and, in the 29th paragraph of their affidavit, I find this expression—“The general plan of pacification had not the effect of pacifying the laymen of the said Connexion, but the agitation and controversy became exceedingly vigorous and alarming, until, in 1797, some of the most influential laymen of the Connexion met at Leeds, during the sittings of the Conference, and a series of regulations were adopted, and the regulations so adopted in 1797, and the general Plan of Pacification before referred to, have ever since been acknowledged as having settled the constitution of Metho-

dism." They use, therefore, the identical phrase which is used in the information,—a phrase which, I think, is correctly used, and of which there can be no doubt, and accordingly I have something of a fixed datum, and I have an undisputed point between the two parties which is this—that the constitution of Methodism is now fixed. It is fixed, say the defendants, on the basis of the Articles of 1795 and 1797. I feel myself, then, relieved from great difficulty with regard to what is, and what is not, the constitution of Methodism ; and, having this mutually agreed upon, having regard to that constitution of Methodism, I have no hesitation in saying, that no Preacher could possibly be appointed by these Trustees, who would be a local, isolated teacher, forming the chapel into a chapel of Independents, rather than a chapel of Wesleyan Methodism, but that the Preachers to be appointed must, of necessity, be Preachers who are in connection with the general system, who are parts and parcel of that circulating system which takes place throughout the whole course of Methodism—Preachers itinerating throughout the various Circuits, and that those Preachers, and those only, could be appointed. If so, looking through the history of the Society, I find that, beyond all doubt, there has never been any attempt whatever, on the part of any one, to appoint this circulating or itinerating Minister, except on the part of the Conference itself. That is a point, however, which has been disputed, and has to be, in some degree, sifted, because it is said by the defendants, who object to this view of the Trust, that the Trustees have in fact appointed those Preachers from time to time, and that they have appointed them at the Quarterly Meetings. Well, now, the Quarterly Meetings are Quarterly Meetings of the Circuit, at which Quarterly Meetings of the Circuit there are gathered together, first of all, the Preachers and the Assistants. There is some question whether any other parties have a right to be there, unless called there ; but I will assume the Trustees of all the chapels in the Circuit have a right to be there, and that the Leaders of every Class have a right to be there. What is done at these Quarterly Meetings is nothing more than this. Suppose there was an appointment, could I possibly say that an ap-

pointment made at that Quarterly Meeting was an appointment made by the major part of these Trustees of the particular chapel, the meeting being a meeting of the Preachers of the Circuit, and of the Assistant and Trustees of all chapels concerned? Of course the Trustees of this chapel might be out-voted by a majority of persons who had not the slightest connection with the chapel in question. It would be impossible to consider an appointment made at that Quarterly Meeting as an appointment made by the Trustees. But it is quite clear to my mind, that all that is done at these Quarterly Meetings is, to make a general recommendation. The general mode has been to select a Committee of Management to meet the Committee of Conference, who take upon themselves the appointment of Preachers. I will assume the recommendation comes direct from the Quarterly Meeting to the Conference, still it is a recommendation, and a recommendation only, and it is in evidence on the part of the relators, and that is not contradicted, that there have been many instances of the Conference declining to accede:—no doubt in most cases they would accede to the recommendation of the Quarterly Meetings. Further than this, before briefly going over the proceedings of Conference on this branch of the subject, I have an exceedingly strong circumstance indicative of the difficulty felt by the Trustees of this chapel, with reference to this particular point, even as early as Mr. Wesley's own life time, and much more so since his decease, in regard to the conduct they themselves have pursued. First of all, what do I find with reference to this deed? This deed, which it was argued was in some sense all-sufficient, is found to be so defective in the view of the parties themselves, that they think it necessary to amend it by deed in the year 1782. Now, whatever observations I have made as to the rights of the parties in 1751 to declare the trust, certainly have no bearing whatever upon the rights of the parties in 1782 to alter or vary the trusts so declared. I cannot conceive, that the parties in 1782 had any right to alter the trust deed of 1751 in any matter of importance, which is in any mode inconsistent with the original trust declared of the charity. I qualify my observation, because I bear in mind the observation of the learned Lord Justice Knight Bruce, in the case of *The Attor-*

ney-General v. Murdoch, in which he conceives it is competent to a Society and its office-bearers and all interested in the land to make alterations in the trust so long as they did not alter the paramount and original trusts of the constitution. Now, in this deed of 1782, it is found that there were evidently some parties besides Mr. Wesley dissatisfied with a mode of selecting a Preacher, which would put it in the hands of the Trustees of this single Society of Birstal to appoint the Minister; and accordingly we find by the provisions of that deed, that it affects to vary the ultimate trust by directing that, after the death of the survivor of the three Gentlemen first named, a person shall be "appointed to preach in the said house by the Trustees of the said premises for the time being, and such members of the said Society as had been class leaders, for three years at least, within any of the circumjacent villages of Birstal, Great Gomersal, Little Gomersal, Birkenshaw, Adwalton, Drighlington, Batley, Carlinghow and Heckmondwicke, or the major part of such Trustees and class leaders." I am told these are different places within the Birstal Circuit, and that appears from the subsequent deed, in which, when Heckmondwicke had ceased to be a portion of the Circuit, the class leaders in that particular place were omitted. The only observation I make on this branch of the case is that evidently the parties themselves were dissatisfied with the arrangement, and did not think it one that would secure an union with the great body of Methodists, and they were apprehensive that if the Trustees alone should appoint, it would produce, which I believe would have been the result, a species of Independency being established; and therefore it was necessary to associate the Class Leaders of the different members of the Society. So matters stood in 1782, when the peculiar position of this Deed of Trust seems to have attracted a good deal of attention; and I use this as evidence, first of all to show that the parties themselves to the deed were not satisfied with the original deed having provided what should take place after the death of the survivor. But now, in 1782, Mr. Wesley's attention seems to have been directed to this matter by the remarkable case of Dewsbury. At Dewsbury, the chapel having been built, Mr. Wesley himself was not armed with that

power, but the Trustees had at once appropriated to themselves the power of nominating the parties who were to preach in the chapel. Mr. Wesley described it as filching from him the power of nomination, and that they had a power of excluding him as well as other parties. This excited attention to the other Trust Deeds which existed. But, in order not to go through in detail, that with which everybody in the case must be conversant, it appears there were various and repeated inquiries whether all the deeds were settled according to the Conference Plan, and if not, that care should be taken to do it, and persons were sent down to see that it was done; and thus, Mr. Wesley being annoyed with the Dewsbury Case, considered what course should be taken; and it appears, from his journals and letters, that the only course open to him was, either a suit, or the course of building a new Chapel. Well, one cannot be surprised at Wesley, in his position, not being anxious to embark in litigation with reference to these matters, concerning the Chapel. It would have been very detrimental, no doubt, to the general character of the Society, that parties, instead of saying "See how these Christians love one another," should say, "See how these Christians are disputing with each other;" and in every way it was to be deprecated, independently of any question as to the probability or of the improbability of the success of such an application. Therefore he said,—"There is an alternative; I will build another Chapel. I can build another Chapel; and, although rivalry and opposition are unpleasant, yet that is the course I will take, if I am obliged to do it, with regard to Dewsbury;" and, as far as I can collect, that seems to have been the course pursued at Dewsbury. At all events, the Dewsbury case was never brought into any course of trial. Now, the Birstal case was found to be in a similar position, in one sense, to Dewsbury, but the difficulty would not arise until after his death. This evidently gave much more time for deliberation and reflection, and then a singular course of circumstances took place. First of all, I should state, arose the deed of 1782. Mr. Wesley being down there in 1782, they were contemplating at that time this change. They had to appoint new Trustees, and it was necessary to have some deed; and at the time they were contemplating this change, with reference to the appoint-

ment by Class-leaders as well as Trustees, he was performing duty there, when they brought him this deed; and he gives a narrative of what are called the proceedings of Birstal, which exactly tallies with the letter which he wrote earlier than that narrative of the Birstal case, when the matter seems to have been fresh in his mind, as to what occurred with regard to the execution by him of this deed. That narrative is contained in the twelfth volume of his Correspondence, in a letter, dated the 28th May, 1782, the date of the deed itself being the 8th May, 1782. Therefore, within three weeks of the circumstance having taken place, there is this narrative. "Dear Brother, The history of the matter is this: When I was at Dawgreen, near Birstal, the Trustees for Birstal House brought me a deed, which they read over, and desired me to sign. We disputed upon it about an hour. I then gave them a positive answer, that I would not sign it; and, leaving them abruptly, went up into my room. About noon I preached at Horbury. In the evening, I preached and met the Society at Wakefield. At night, a little before I went to bed, the Trustees came again, got round and worried me down. But I think they cannot worry you." I should observe, here, that Charles Wesley is made a party to the deed, but does not execute it;—"May you not very properly write to Mr. Valton?" Mr. Valton was, at that time, the Assistant of the Circuit.—"If the Trustees will settle the Birstal House on the Methodist plan, I will sign their deed with all my heart; but if they build a house for a Presbyterian Meeting House, I will not, dare not, have anything to do with it." Then the rest of the letter is immaterial to the matter in question.

Then this letter has been put in evidence,—a letter in Charles Wesley's handwriting. It is either a draft of some letter that was sent, or never sent at all. The only value of it is, in showing, as far as Charles Wesley's views were of any importance,—and they are of some importance in the history of Methodism,—what his views were of the particular transaction in question; and it is also remarkable as showing the extreme acuteness of Charles Wesley's mind, for he certainly does raise every argument that has been raised at the bar in favour of altering the deed. He puts it thus. He has been advised to write to Mr. Valton, but it is addressed to somebody with reference to this subject matter,

and he says,—“ The case has not been fairly represented to you. You have been informed, that ‘ about thirty-one years ago a number of poor Methodists purchased ground, and built a preaching-house.’ But how? At the instance of my brother, all the Methodists of the neighbouring Societies contributed to the building; and this in confidence that it would be settled on the same plan as all our preaching-houses were. ‘ But the Founders had a right to settle it as they pleased.’ True; but the Trustees were not the Founders; although they lent a considerable sum of money for the completing of the building; as many others have done in all parts of England, who yet never imagined this gave them a right to appoint the Preachers. ‘ Accordingly, they settled it.’—They! I know not who; certainly not the original contributors,—‘ on nineteen members of the Society.’ And pray who could give these nineteen such a privilege over the rest? It seems to me here is no good foundation. All the Society were willing my brother should name Trustees: but who besides had any authority to name them, I cannot understand! But, be this as it may”—then come the objections put in—“ ‘ The Founders did not choose, that after Mr. Wesley’s death a body of men whom they knew not should appoint their Preachers but the Trustees.’ The Founders! Who were they? The 50 or 500 Subscribers? These are the real Founders; and nine-tenths of these did and do choose that all the Travelling Preachers should be appointed, not by the Trustees of any particular houses, but after Mr. Wesley’s death by the General Conference, that the Methodists may be one body throughout the three Kingdoms.” Then he goes upon that branch of the question which is the less important one.

I use these letters, I beg to say, as evidence in no way contradicting the deed. I doubt if they can be in strictness used as evidence of the circumstances under which Mr. Wesley executed the deed; but I think the letters are of importance as evidence of the general constitution of the body of Methodists. Upon that, I think they are evidence, because John Wesley and Charles Wesley may be considered as the Founders, and John Wesley as the Governor of the Methodist Body. All I use this deed for is this:—It will be found that, in the early part of my Judg-

ment, I differ from Charles Wesley as to whether the Trustees had not power to execute the trust, and may be considered a Committee of Founders for the purpose. I differ from that view ; but I think the use of the letters is this, to show that Mr. Wesley himself, in speaking of Methodism, always declares that Methodism does not consist in having what may be called a Presbyterian meeting-house ;—it is one united Society, and Charles Wesley puts that extremely clearly, and I think perfectly consistent with all the other circumstances of the case, as strong corroborative evidence of what the facts were as to Methodism, when he says,—“ They do choose that all the Travelling Preachers”—clearly showing that in his view Travelling Preachers, and Travelling Preachers alone, were the only persons intended by this deed—“ That all the Travelling Preachers should be appointed, not by the Trustees of any particular houses, but (after Mr. Wesley’s death) by the general Conference, that the Methodists may be one body throughout the three Kingdoms.” Therefore, there seems to have been no doubt in the mind of anybody, at that time, that the Preacher intended was a Travelling Preacher, and there is no doubt that all the Founders intended that the Methodists should be one Body of which these should be an integral part. It is with regard to that that I would use those two letters.

Then it is said, that Mr. Wesley signed this deed. Now Mr. Wesley explains, I observe, in 1782, that he had no power to alter this deed which had been so framed. The deed had been framed in 1782, upon this particular trust ; Mr. Wesley himself had no power to alter this trust ; and the circumstance of his having executed that deed really amounts to nothing else than this, that it might be made matter of evidence, as far as he was concerned, to show that he had no objection to this particular course which was adopted, and being used for that purpose, and as a matter of evidence, and a matter of evidence only, I do apprehend I am entitled to look into John Wesley’s letters as to what has taken place, not as evidence of the facts I have stated, but I have a right to look at his letters to show John Wesley’s great opposition ; and certainly any use that could be made of this deed, as being evidence of his assenting to it is entirely countervailed by that letter written three weeks

afterwards, and the statement he drew up, called the statement of Birstal house, and the only use of Mr. Wesley's sanction being on the question of whether he assented or agreed as representing the whole body of the Conference although he was not in the habit of acting without their advice. I should hardly have thought that a deed of this description would be a deed in his legislative capacity, yet if it could be said that he had, in his legislative capacity, sanctioned this particular form of deed of 1782, with regard to the ultimate trusts, I say that at once is answered by showing that he, *totis viribus*, opposed this within three weeks after the transaction took place. The case of Birstal house seems to have been drawn up in 1783. It would be going too much at length to read that *in extenso*; it is sufficient to say, that he gives a detail of the circumstances exactly analogous to this; he expressed vehement opposition to the course proposed, and drew up this very case as an address to the general body of Methodists at large, in case of this course being persisted in, and saying "I am determined that there shall be no contest after my death, and we will raise by subscription another house, in opposition to this very house so built," taking the course that was adopted in regard to the Dewsbury house. There the matter stands, as far as Mr. Wesley is concerned, and the parties opposed to the relators are entitled to this observation, that Mr. Wesley was vehemently opposed to it; that he went down, found that he took nothing but his labour for his pains; he did all in his power to oppose it; the Trustees never gave way, and the Trustees have contended, and do contend up to the present time, (they are entitled to the benefit of that observation,) that they have a right to exercise these privileges and will not alter the deed.

Now, after this transaction of 1782, the next important event that took place was the foundation of the Conference itself, in 1784. Now, the Conference deed of 1784 has no immediate, direct bearing, in the terms of it, on the Chapel, because, as has been truly observed by the counsel for the relators, the deed expressly recites that the object of it was to provide an explanation of the term "Conference," which had been used in several deeds with reference to the appointment of Preachers, wherein the power had been reserved to the Conference after the death of the two Wesleys and Mr.

Grimshaw. As this deed was not settled on that plan, you cannot construe the words of this deed strictly, as bearing upon this particular chapel. On the other hand, there is this to be observed, that the contest going forward on the part of Mr. Wesley, and he insisting either that this chapel must be reduced to the state of other chapels, or he must build another, it is quite plain he contemplated the deed of 1784 to be the regulating deed of all chapels with which he would have any connection. Although it is not applied strictly to the terms of the particular case, it is a deed strictly appointing the form of Conference in future ; and it is also a deed by which Mr. Wesley may be said to have parted with his sole controlling power and authority. He there nominates and appoints one hundred persons to form the Conference. It was found subsequently that that was not a sufficiently large number ; and, although they adhered to the form, in substance other persons were admitted to vote at the Conference, although the actual members of the Conference were only one hundred in number, and taken from one hundred senior members. That body became the regulating body with reference to all matters of the Society within its proper jurisdiction.

Then, after 1784, the contest seems to have raged a little longer, with reference to Birstal, because I think the last edition of the Birstal case was in 1788, and, after that time, there was some contest going on. But Mr. Wesley, having survived Mr. Grimshaw and Charles Wesley, dies in 1791. Therefore, for forty years, there really was no reason why anybody should raise a litigation with reference to this house, except with a view to have the question ultimately determined, and to avoid litigation that possibly might take place after his death. Then, in 1791, he dies ; and then arises the very difficulty which he had anticipated in his life time, of how far the whole community would submit ;—whether they would submit to any, and if any, to what extent, to be governed by the Conference. That is a question that excited considerable anxiety in his own mind before his death. He had taken several steps to bring the people gradually to the mind of uniting themselves with the Conference ; but the object was not finally achieved, even by the Conference deed ; and in 1791 the Conference met together, and they arranged for the future government of the Society in the

first place, by establishing what are called Districts, which was one new step taken on Wesley's death. The first thing they do in 1791 is this. As I said before, they felt some difficulty as regarded their number, and they set forth a letter of Wesley's, written in 1785 to the Conference, and they say "the Conference have unanimously resolved, that all the Preachers who are in full connection with them, shall enjoy every privilege that the members of the Conference enjoy, agreeably to the above-written letter of our venerable deceased father in the gospel." And, although they elected the 100 senior members to be members of the Conference, they seem to have admitted other members to their debates. Then, having made a declaration as to their feeling with reference to Mr. Wesley's death, they proceed to do this. "What regulations are necessary for the preservation of our whole economy, as the Rev. Mr. Wesley left it? Let the three kingdoms be divided into districts; Scotland into two, and Ireland into six: as follows." Then they name the districts; and the fourteenth district includes Leeds, Sheffield, Wakefield, Birstal, Dewsbury, and Otley. Up to this time, Birstal had remained in connection with them. Then they say, "What directions are necessary concerning the management of the districts? The Assistant of a circuit shall have authority to summon the Preachers of his district who are in full connexion, on any critical case, which, according to the best of his judgment, merits such an interference. And the said Preachers, or as many of them as can attend, shall assemble at the place appointed by the Assistant aforesaid, and shall form a Committee, for the purpose of determining concerning the business on which they are called. They shall choose a chairman for the occasion; and their decision shall be final until the meeting of the next Conference, when the chairman of the Committee shall lay the minutes of their proceedings before the Conference." This resolution seems to have been the foundation of a good deal of heart-burning in the Community at various times. The question is, whether there had not been an assumption of power in the formation of these Districts, and in the calling together of these District associations by the Assistant of the Circuit.

There seem to have been other quarrels between the parties, as to a very important question, undoubtedly; for, upon that depended the question of their ultimate sever-

ance from the Church of England. And one cannot help feeling, as a member of the Church of England, considerable regret, that so highly religious and earnest a Connexion as that of Methodism should, by that step, have been entirely separated from our Communion: but the question arose, as to the administration of the Lord's Supper, in various chapels. And, after considerable contest, the result, the final result was, that in every chapel, —first, only in such as wished it, for there were various temporising expedients adopted—but finally, the result was, that in every chapel the administration took place, without regard to whether it was administered by an ordained Minister of the Church of England or not. This seems to have given rise, on the part of those who were aware of Mr. Wesley's desire to remain in communion with the Church of England, to a good deal of opposition. Sometimes it occasioned, when differences of opinion existed, an exclusion, by the Trustees, of persons of different views to themselves on this subject, from these various chapels. The consequence was, that a great discussion arose as to the powers of Conference, especially as to the power connected with Trustees and connected with the chapels. Now, here I will take from the affidavits of Mr. Fawcett and others their own view of this transaction and of this dispute, and of what they consider to be the proper limit of the Conference power. They speak of the general assumption of ecclesiastical power, and then they say this:—

“ We further say that the following Declaration, signed by the Trustees of the charity estate, was sent by the Trustees whose names appear appended thereto, in answer to an address of the Trustees of Manchester, Salford, and Stockport, to the Methodist Societies at Birstal and elsewhere, that is to say,— Birstal, Nov. 27th, 1794, We have long seen with pain the proceedings of several of the Preachers, who seem to mind nothing of causing divisions and contentions in the Societies, in order to come at their own ends. What a pity that those who profess to fear and love God, and to be messengers of the Prince of Peace, should be the first to cause strife and divisions! We have not yet forgot the violent manner (some of these very men who have been so busy at Birstal lately) in which they assaulted the Birstal Trustees some years since, and actually bought a piece of

ground at a very great price, to build an opposition chapel on, and would have done it had not Mr. Wesley thought proper to put a stop to it. We think it high time for the Trustees throughout the kingdom to unite, and, if possible, to stop the present proceedings ; and, if it be thought necessary to call a general meeting of Trustees, at present, or at some future time, we shall appoint a delegate to represent the Birstal Trustees. We likewise approve and adopt your four resolutions." Signed by all the Trustees then present. "And we further say, that the following is a copy of the four resolutions to which the above memorial or declaration refers ;" and these are very important ; these resolutions which were adopted, were adopted, it will be observed, by a Committee. The Trustees of the Manchester, Salford, and Stockport body had issued an address, in which they called upon the Trustees generally throughout the kingdom to co-operate with their views, with reference to the transactions between themselves and the Conference. "1. We are friends to ancient Methodism and the good old way, which has been so long approved by the Lord to the salvation of so many thousands. We are determined to afford it all the support in our power, and to suffer no innovations, without the same being first agreed upon between us and the Conference. 2nd. We are determined to do all in our power to support those Preachers who maintain the discipline of old Methodism, who act agreeable to the rules of Conference and the nature of our trusts, and who are promoters of peace, and not of divisions and contentions." This is remarkable ; they are going to support those Preachers "who maintain the discipline of old Methodism, who act agreeably to the rules of Conference." It seems to sanction, that the Preachers are to be governed by those rules, although they might take different views of what those rules were. "3rd. We cannot in conscience countenance or support those Preachers, who so glaringly divide from the rules of Conference, and that to the convulsion and division of the Societies. 4th. That as the building of chapels merely from a spirit of opposition, and without taking the steps previously necessary, according to the rule of Conference, is not only bringing a charge upon the whole Connexion, but also is a lasting monument of disgrace thereto, we cannot in future admit those

Preachers into our chapels, who thus continue to foment division by preaching in such chapels." That refers to the rule of Conference which I have not noticed, in which it is said, no new chapel shall be built until there has been time for deliberation, and it has brought before the Conference for deliberation, and these new chapels were to be built to meet cases where the parties in possession of chapels refused to act according to the principles of the whole Connexion. I observe, in this very statement, a professed adherence to all parts of the system of Methodism, but they say that new Preachers do not adhere to the rules of Conference and old do, and we shall give them the preference. It was a matter of contest, which was right in that view, but we have on both sides an adhesion to the rules of the Conference. Then we come to the result of all this heart-burning, which seems to be finally terminated. I purposely pass over other matters that I had noted, but which would take me too long to discuss fully. These heart-burnings were finally terminated by the Articles of General Pacification, which were come to by the Conference of 1795, and which, coupled with those of 1797, we have Fawcett and others saying, form now the constitution of Methodism.

Now the first set of Articles are about the Lord's Supper;—of course I need not enter into that;—no question now arises upon that. Then concerning Discipline,—“The appointment of the Preachers shall remain solely with the Conference, and no Trustee or number of Trustees shall expel or exclude from their chapel or chapels any Preacher so appointed.” Now that, no doubt, agrees entirely with the view I have already come to, that the itinerating Preachers are invariably to be appointed, and have been always appointed by the Conference, and they are to be so appointed. And again observe, they are called “Preachers for the Circuit.” By Preacher or Minister is always meant this itinerating body. It is said, in answer to this, and which would be decisive of the case standing alone, that the same regulations provided that nothing here done,—certain addenda were added afterwards,—that nothing contained in these rules should be construed to violate the rights of the Trustees as expressed in their respective deeds.

Now, that no doubt would have a considerable bearing upon the question here, how far or not these rules, standing alone, would be sufficient, if there were any other mode of selecting Preachers and appointing to these chapels,—how far these rules would be sufficient to exclude those Trustees from that mode, and I do not hesitate to say, that if there was any mode of keeping up these chapels, by the appointment of a Preacher selected by the Trustees in connection with what I hold to be the clear and paramount object of the charity, Itinerant Preachers, they would come within that saving. But there are many other things in the Trust Deed:—to one I shall apply myself presently. I conceive myself, that that trust, with reference to the necessity of a party being a member of the body, is not necessarily embodied in this Trust Deed. Further then that, there are several powers which are given in various Trust Deeds of the Society. They do not occur in this Trust Deed, but in later Trust Deeds, with reference to mortgaging, the collection of the pew-rents, and various other dealings and transactions of the Society. They say nothing here is to prejudice the rights claimed by these various Trustees, in reference to such matters as these; but if it is to be construed in the way contended for, instead of being Articles of Pacification, it would leave the whole at sea. The whole question was ought the Trustees or not to exclude certain Preachers, holding certain views with reference to the administration of the Lord's Supper? That was the whole question. The Conference say, "Our view is, we must, as we always have done, appoint Itinerating Preachers. That being so the Trustees shall not expel or exclude them from the chapel." Then there are certain provisions in case of immorality and erroneous doctrines, giving certain powers to the Trustees, namely, a power of bringing the case before the Conference, and always reserving the appointment of Preachers to the Conference, and only giving to these parties the power of suspending the party until the Meeting of the next Conference. And then, fourthly, there is this clause which, in some degree, favours the contention of the defendants, that "if any Trustees expel or or exclude a P. eacher by their own separate authority from any chapel in any Circuit, the Chairman of the District

shall summon the members of the District Committee, the Trustees of that Circuit who have not offended, and the Stewards and Leaders of the Circuit; and the members of such assembly shall examine into the evidence on both sides, and, if the majority of them determine that the state of the Society in which the exclusion took place requires that a new chapel should be built before the meeting of the next Conference, every proper step shall be immediately taken for erecting such chapel." One sees to what that is directed. I have read the resolution, in which the parties raising the question before Conference said they adhered to the old mode,—do not let any new chapel be built out of a spirit of opposition, or not according to the rule of Conference, and that they ought to have the case brought before them. Here these rules say, if the Preacher is expelled, the District Committee may determine if a new chapel should be built, and may immediately and before the meeting of Conference proceed to erect a new chapel. Then it may be justly said, but if the Trustees have no power to expel a Preacher, why build a new chapel, why not assert your right? I think the answer to that is, "This is the course Mr. Wesley took." I am not sure this was not a wise course, and would not have been a wise course now, instead of raising this litigation and occasioning expense to the Society. I am not sure it might not have been a wise course rather to submit to that which you are, no doubt, entitled to litigate, and to take the course pointed out by these Articles of Pacification, that if the majority of the Trustees, which has not occurred yet, immediately resolve to exclude the Preacher, to build a new chapel for the purpose of avoiding all litigation. I think that is a reasonable interpretation to be put on that rule. It in no way necessitates the interpretation that the Trustees have, in any instance, a power to expel the members. Further than that, I do not know there is anything particular in those rules, except the rule I have called attention to already, namely, that it shall not prejudice the right of the Trustees, until you get to those in 1797, which, in connection with those of 1795, are stated on both sides to form the present constitution of Methodism.

Now, what are the Rules of 1797 with regard to this matter? Certain rules are declared with reference to the removal of Leaders, Stewards, and Local Preachers, and those are the important rules which the dissentients to the present application have in view when they say they are to be coupled with the Rules of 1795. There was a great complaint of the exercise of spiritual influence in the management of temporal concerns;—the office of the Stewards especially, and the removal of Leaders and Local Preachers, who were more immediately under local superintendence perhaps than the Itinerant Preachers, and with regard to those parties they thought the central Body was usurping too much influence. Therefore, they resolved “that no person shall be expelled for immorality until such immorality be proved to the satisfaction of a Leaders’ Meeting. “In respect to the appointment and removal of Leaders, Stewards, and Local Preachers, and concerning meetings,” there a regulation is set out which gives a particular mode of trying this. Then “That the Minutes of the last Conference, concerning the calling of meetings to consider of the affairs of the Society, the calling of meetings to consider of the Society or Connexion, be explained; and as we are exceedingly desirous of preserving the peace and union of the whole Body, we have agreed upon the following explanation, viz.,—As the Leaders’ Meeting is the proper meeting for the Society, and the Quarterly Meeting for the Circuit, we think that other formal meetings in general would be contrary to the Methodist economy, and very prejudicial in their consequences. But in order to be as tender as possible,”—they give leave to summon special meetings. Then they say, “we have selected all our ancient rules, which were made before the death of our late venerable father in the Gospel, the Rev. Mr. Wesley, which are essential rules, or prudential at the present time, and have solemnly signed them.”

Then, there comes the 7th, thus—“In respect to all new rules, which shall be made by the Conference, it is determined that if, at any time, the Conference see it necessary to make any new rule for the Society at large, and such rule should be objected to, at the first Quarterly

Meeting in any given Circuit, and if the major part of that meeting, in conjunction with the Preachers, be of opinion that the enforcing of such rule in that Circuit will be injurious to the prosperity of that Circuit, it shall not be enforced in opposition to the judgment of such Quarterly Meeting before the second Conference. But if the rule be confirmed by the second Conference, it shall be binding to the whole Connexion. Nevertheless, the Quarterly Meetings rejecting a new rule shall not, by publications, public meetings, or otherwise, make that rule a cause of contention."

Now, after the clause I have just read, it seems to be exceedingly singular it should be contended, that the Conference has not a very large power,—it is not necessary for me to go beyond the particular case before me,—that the Conference has not a large power, in making Rules and Regulations for controlling the Society at large, and at least for controlling those very persons who from the beginning, were always subject to their peculiar action, and the appointing and placing of these Itinerant Preachers in their various Circuits. All parties agree, that these rules now govern this Body, and I find in this rule a provision, that the Conference may make new rules—governing the whole Society at large, but they are not to be put in force, if objected to at a Quarterly Meeting, until the next meeting of Conference.

That appears to me to lead up to the conclusion, which was arrived at; I have only been thus particular in stating it, from a peculiar bearing it has upon this case; it was arrived at by much higher authority long before, namely, by the Lord Chancellor Lyndhurst, following in that respect the Vice Chancellor of England, on which they both state this :—first, the Vice Chancellor of England states—"I must consider it was never intended by the parties who have continued to belong to the Methodist Society in succession, since the time when it had its origin, that there should be anything else but one general object pursued, unless indeed there might be any particular bye-laws, or rules and regulations of a local kind, but that it was the object and intent of all parties concerned to form one body, to be governed by one set of laws. Although it may be perfectly true, to a certain extent, that the persons

appointed Trustees, under the deed of 1781, might consider themselves called upon to execute their trust with regard to a certain then existing set of laws, it appears to me, that if, in the progress of time, the persons who were Trustees for the time being, as successors to the first Trustees under the deed of 1781, received into their chapel a person appointed by the yearly Conference to preach, they must take that person into their chapel, and deal with him, not merely on what is the general expression of the obligations of the Trust Deed, but according to all the Rules from time to time enacted by the Conference, which it is admitted, on all hands, has been the supreme legislative and executive body since the death of Mr. Wesley." Every word of that has a clear and distinct application to the present case. He not only proposes them, with reference to the Preachers to be the legislative body, but he says, If I find a body of Trustees, with certain defined trusts in their deed, as to the mode of appointing and regulating the Preachers, yet if, after that deed the general body of Methodists have agreed that the Preachers shall be appointed or constituted in another mode, it is the duty of the Trustees to follow the regulations of the general body of Conference. That observation appears to me to carry the whole of the case, with reference to what must be done with regard to the appointment of Preachers henceforth in this particular communion.

Now Lord Lyndhurst says—I need hardly read it—it is simply a statement that he agrees with that view, and he treats the Conference as being in that sense at least the governing body. It is not necessary for me to endeavour to raise doubts or difficulties upon other parts of the question, but for this purpose, for the purpose of who are to be the Preachers in a given chapel, it appears to me throughout, that it was intended that these should be the Itinerant Preachers, that those Preachers have been always regulated by the Conference in Wesley's time, and that they have been regulated by the Conference ever since, and therefore those persons, and those persons only, appointed by Conference can be the persons to occupy the chapels.

There are some other strong circumstances in favour of this view, unquestionably. It is said, here I am asked, in 1853, to alter a deed of 1751, made more than a hundred

years ago, and that, too, after a dispute about the very deed of 1780, and the successful assertion, as it is said, by the Trustees, of their rights, both in 1780 and ever since. Now, it is true that land has been since purchased, which I must deal with before making my final decree, in 1809 and 1812. With regard to that land, no trust was declared at all until 1835, and with regard to that, the Trustees in 1835 appear to have had some communication, so far as I can collect, made to them, with reference to the wishes of the Conference, that it should be on the Conference plan. There seems to be some evidence of that, but they persisted in retaining the nomination. It is perfectly true, that on paper they did so insist, and I am not blaming them at this moment for following the words. Any conveyancer would have told them,—You must make your conveyance exactly in the form in which it appears it was originally made:—but what have been the acts? Has it been found practicable, in any way, to carry out that scheme of the trust? Why it has been found so impracticable, that ever since the death of Mr. Wesley, now more than sixty years since, notwithstanding all this contest, notwithstanding all these views on the part of the Trustees of what they ought to have done, which do not appear to be always the view of the majority of the Trustees, invariably the appointments have been made by the Conference, and there has not been a single appointment according to the trust deed for sixty years. As far, therefore, as my view of the impracticability is required to be borne out as to the whole Body at large, including the Trustees themselves, I think it is distinctly borne out by the fact, that they have not attempted to make any appointment, in any other mode than by leaving it to the Conference to appoint, seeing that the immediate effect of any other appointment must have been the withdrawing of these parties out of the Conference, and therefore disturbing the whole of what I may truly call the Methodist plan.

Now, it is stated, and that is the last observation I have to notice on the part of the defendants, that there is nothing contrary to the Methodist plan in this, for this reason, that this is not a solitary chapel, that Dewsbury was in the same position, and that Wednesbury was in the same position, or

something to the same effect; more than all, (and that certainly is the strongest instance that could be produced,) there is the case of the Bath chapel, mentioned in Mr. Wesley's will. In the Dewsbury case, there was no appointment by the Conference. In the Wednesbury case, the people sent to say they objected to the Conference plan, because they were afraid of having a Minister continued with them too long; and the only result was, in that case, that the Conference agreed to limit it to three years, or even to two years. That disposes of the Wednesbury case, which went no further than that. But with regard to the Dewsbury case, I have already dealt with that by saying I think that forms it in itself no very strong exception, it being a matter instantly protested against by Mr. Wesley in every possible way. The result was, that a chapel was built, and that chapel must be taken to be excluded from the pale of Methodism. But the Bath case deserves more consideration. Now, in the Bath case it appears that Mr. Wesley had, in some way or other, acquired a power of appointing a committee, who were to select the persons to preach at that chapel. That would be, to a certain extent, inconsistent with the general plans of the Conference in appointing. It left, however, in the power of Wesley, if he had liked, to hand it over to the whole Conference, or it left in his own power to do that which in truth he did, appoint a committee of persons who should nominate the person so to preach, and in that sense took it out of the general system. This was found, however, in practice to be so extremely inconvenient and impracticable, that the very first thing that was done immediately after the death of Mr. Wesley was, that everybody so named resigned his power into the hands of the Conference. That was the first thing. That appears in the Chronological History, page 207. "We, the underwritten, being appointed by the Will of the late Rev. John Wesley as a committee to preach in, and appoint preachers for, the new chapel in the City-road, London, and also the Methodist Chapel in King-street in Bath, do engage, that we will use all the rights and privileges given us by Mr. Wesley, in the present instance in entire subservience to the Conference." And thereupon all the parties so nominated by Mr. Wesley signed their names. The parties so named by him, I should observe, are every one of them preachers, and I believe every one of them are

also assistants,—Mr. Valton's name is, among the rest,—called after the death of Mr. Wesley, a Superintendent. Unquestionably though they seem to be in some degree an exemption from the general rule, I have no clear evidence of how this originated. It might well be, that if a person left a chapel by will,—I have no evidence how this was done,—it is stated that, in the will there is a power of doing this. If certain persons gave this chapel to the Wesleyan Connexion, providing that these conditions were complied with, it might be thought expedient, in a town of the importance of Bath, to accept a trust of this description, and not to reject it, although it was inconsistent with the general rules of the Conference. With regard to London, that appears to be an exceptional case. London was a kind of metropolitan District, which does not seem to be regulated by the same rule of Circuits and appointments as the other general chapels throughout the country. But with regard to Bath, that unquestionably may be taken as an exceptional case. With regard to Newcastle, I have not been able to find the evidence upon which they proceeded. I collected from a Report—

Mr. LITTLE.—It was a pamphlet, produced by the Defendants.

The VICE-CHANCELLOR: There again there is no statement of the origin of this trust, neither do I find any evidence of the Trustees having continually exercised this power of appointment, because it seems to me perfectly impossible to conceive any mode in which this appointment could have been exercised consistently,—and that is the point I have to look to,—with the general construction and arrangement of Methodism. I find, with reference to the Bath case, that Mr. Wesley for some reason or other was willing to adopt that trust, but it was found so inconvenient, that the very first step that was taken after Mr. Wesley's death was to take it into the general system. That does seem, so far from contravening the rule laid down by the Vice-Chancellor of England, to carry it out, that it is the duty of the Trustees when there is a general recognised body, to follow the rules laid down by that body, and that it should not proceed according to the mode in which the original trust created it. That, instead of being an exceptional case, is one that proves the rule, because they had a sacred duty thrown upon them by Mr. Wesley, and yet

they thought the best mode of getting up to the intention of Mr. Wesley was to throw it into the general system. Those exceptional cases are the only cases which created any difficulty in the way of the construction which I have throughout felt bound, by the whole confluence of authorities from first to last, to adopt. It has been said there are Local Preachers who might be appointed, and that there are Supernumerary Preachers who might be appointed. I have already given my reasons why I could not construe "Preacher or Minister" to mean Local Preacher,—therefore it appears to me that, from the very first institution respecting the regulations of trusts, they were excluded. There was nothing analogous to it. There was no instance of a Local Preacher occupying chapels which vested in Trustees. Every one of the disputes that have arisen upon them has always arisen in respect of Travelling Preachers, and no question has ever arisen as to whether Local Preachers ought to be placed in them or not. Now with respect to Supernumerary Preachers, it appears that—they are worn-out gentlemen, who appear to have deserved well at the hands of the Conference, and who are thought sufficiently able to perform occasional duties, and ought therefore to be provided for out of the funds of the Society ; it is idle to suppose that it was the intention of the Trustees to place people of that character in this particular Chapel ; nor do I find any instance of a Supernumerary Preacher having been appointed specially to any particular Chapel, or that in truth, from the beginning to the end, there has been ever any other mode of appointment than that of the appointment by means of selecting one of the parties named as itinerating preachers throughout the Circuit.

The Solicitor-General did make one observation which I have not adverted to.—He said, all that was provided against was the doctrine, to secure the soundness of doctrine, and that is all that it was necessary to look to. They were to preach and expound God's word in the mode in which it had hitherto been expounded. It is sufficiently obvious from the observations that I have made, that I cannot accede to that view ; in truth, so far from this being correct, the actual doctrine seems to have been a very secondary object of Mr. Wesley. No doubt he had, as others had in the Church of England, a great tenacity to his own

views of what that Church should teach. He held that he was a member of that Church, and did teach as the Church taught, and it was not his notion that he was introducing a new doctrine, but he was only enforcing more largely and vehemently the particular doctrines which he conceived to be contained in the articles of that church. His whole history abounds, from the beginning to the end, in instances of his anxious desire to keep himself in union, and in devoting himself only as a preacher of righteousness, having a deep and earnest feeling of those truths he was called upon to preach, and feeling that those whom he denominated as Clergymen of the Church of England had not a sufficiently lively conception of the awful truths with which they were dealing ; and his object was to select and gather out of the whole body of the Church of England such persons as were really earnest in the matter which he had in hand, and associate those persons in a Body to be governed and regulated by Laws, which would secure their adherence to the reality and vitality of religion, which all in common with himself professed, but which they were to exercise in a higher and more perfect manner.

In fact, the great doctrine of Mr. Wesley, in one respect, was to lead onwards to Christian perfection. He believed that, in making that selection, and even by subdividing and selecting again others whom he engaged in what he called "the band," he was best achieving this object. What he was founding, instead of being a sect, was much more analogous to what in another church would be called an "order." He conceived he was forming a distinct order, which was to be the subject of distinct government, but which was always to harmonize with the Church of England, and the regulation and government of the Body was the uppermost thing in his mind, with reference to what the foundation of this trust was, and, even I may say in one sense, more the object of his anxiety than the formation or inculcation of any peculiar doctrinal views. It is true, it is inserted in the deed, and perhaps it is in some respects to be regretted, but there is a declaration in his Model Deed, in the year 1749, that they were not to preach anything contrary to his peculiar views ; for the narrowing of the largeness of Christianity will be found to be more productive of evil than benefit. Unquestionably, those peculiar views he considered

to be in common with all the rules of the Church of England; and I may further add, that I do not find, in any history of Methodism, general or particular, that there ever was, until the ordination of Ministers, any distinct or precise objection in point of doctrine, certainly no proceeding was ever had against Mr. Wesley on account of his doctrines, as being doctrines which he could not hold consistently with being a member of the Church of England. There may have been persons who may have conceived that he was erroneous in his views of doctrine, but there had been none in his life time who held that he was liable to be removed on account of the doctrines that he held, and I fancy that a large proportion of the opposition made to him might, on that argument, be found not to have existed so much with regard to his doctrines, as objections to the pureness of life, and the rigorous rule of conduct which he continually enforced, and which the world in general thought was a slur on them in practice.

That being the general scheme, it would be monstrous, as it seems to me, looking at that deed, to hold that doctrine alone was in view, and that I must not consider that the paramount object was the continuation of an association or body so formed as I have described it, in one united body of Christians, never to be separated from them by any accidental circumstance which might take place in the subsequent developement of his scheme. It was not perfectly developed, for I do not believe that there was any perfectly developed scheme at the time as to how these matters were to be carried on, or how the Preachers were to be appointed, after the death of Mr. Wesley; but a remedy for that defect, as it seems to me, has been fully offered by the subsequent arrangements of 1795 and 1797, now adopted and agreed upon by all, and that remedy consists in leaving to the Conference that appointment, which by the deed as it there stood might possibly have been rendered afterwards effective, but which it seems to me the present constitution of Methodism renders it impossible to carry into effect..... The main question I decide so far in favour of the relators, and I shall make a declaration accordingly, which will be in effect, (I will state presently the words,) that the Preachers to be appointed must be Preachers belonging to the travelling Preachers, and appointed by the Conference;—I will give the exact words presently.

There remains to be considered, what is to be done with the other case, with regard to the deed of 1782. My exposition of the whole of the deed of 1751 is this—I expound its meaning, first of all, to be, that the parties had a right to make the declaration of trust. I expound what I consider its meaning, and then I proceed to declare, regard being had to the present state of circumstances, that that may be carried into effect with regard to the deed of 1782: it appears to me, that nothing contrary to the provisions of the deed of 1751, holding as I do that deed to be a proper and effective deed, can be allowed to stand, and therefore I propose a declaration, which will point to all the different parts of this deed which appear to contravene the deed of 1751. The question as to what is to be done with the pew-rents does not appear to fall within that category;—at least it may be a question, and upon any questions arising upon particular parts of the suit, I shall be happy to hear any observations.

Then as regards the land bought in 1809 and 1812, it stands thus:—the land has been bought by this same association, the same body of people forming the society at Birstal,—it has been annexed to the property in question, and it appears to me must be held upon the same trusts. There was no power in 1835 of declaring a different trust; and, after this had been bought by the Body, there was no power in any one at the end of that long interval of time to declare a different species of trust. Therefore, I shall hold that those trusts, as far as they are inconsistent, could not be followed. The same observation would apply to the deed of 1843. There is a declaration in 1843 simultaneously, that land is bought by the same Body and it was intended to annex it to the same purposes as were declared in 1782. I conceive the real purposes to be those that were declared in 1751.

Then there was a matter about the Schools. It was said, it was not competent to parties erecting a School, where the preaching-house was to be held for the Preacher, to declare a trust, what should be done for the School. That School was erected in 1814, and the trusts were declared in 1835, and unless the parties are agreed about the School, it might be necessary to have some scheme directed, because it appears to me the parties were not competent in 1835 to

declare the trusts of a School built in 1814. I have evidence before me of what was the set of rules and regulations, and there is evidence of the relators as to what was to be done with the School. I am not aware there is anything inconsistent in those rules with that declaration. If so, it had better be left as it is. That disposes of the whole case as to the property in question.

Now, there remains the question as to the Trustees ; and first of all, whether the parties should be removed. Although the Conference Plan in 1749 suggested that the parties should be removed if they were no longer members of the Connexion, yet that was not introduced into the Trust Deed, (and I am of opinion it was purposely omitted,) and I do not find that it has been alleged to be inconsistent with the general working of Methodism ; on the contrary, there is evidence in the last affidavit, filed on the part of the defendants,—at Birkenhead, I think it is,—a statement, that there are other deeds in which such clauses as these do not exist, and in which Mr. Scott, the present President of the Conference, has been a party to appointing Trustees who are not themselves in any way members of the Methodist Connexion. I do not think that is a ground for removing them.

Then it is said they have separated from the Connexion and are hostile to it. That clearly would not be a ground for removing them if they are duly Trustees. If I were appointing a new Body, on the ground urged by Mr. Little in his argument that these Trustees were not duly appointed, it might be otherwise, but having been appointed by the Class Leaders, and I having now held that is the proper mode of appointment, I must hold these parties are duly appointed. The point is certainly not clearly made ; and what is more, I should say that, in certain parts of the Bill it is rather treated as if it were otherwise. There do occur some words in different parts, but upon the other hand there is nothing at all raising the controversy so as to call the attention of these parties to it, and I cannot assume that all these parties have been unduly elected, even in that mode pointed out by the deed of 1782 and I find further this paragraph, 44 of the Bill,—“ The Trustees named in the deed of 1751, and the succeeding Trustees herein mentioned, have always in law had the possession and now have the possession of the Trust properties,

but with their consent the said Society at Birstal, and the Preachers or Ministers, Stewards, Class Leaders, and other officers thereof, have always had and enjoyed, and still have and enjoy, the actual occupation of the premises in the manner herein stated, and in a manner conformable to the intentions of the parties:”—it may be said that, at law, there is a legal title, and it may be said that their position is different from what it would be as equitable Trustees. Paragraph 57 is more satisfactory,—“There are at present four vacancies in the Trusteeship,”—that is treating the whole Body as a duly appointed Body. I should not dream of concluding the relators, if the matters had been clearly and distinctly raised on the other paragraphs, but really the whole scheme and scope of the Information seems to me to treat this Body as being Trustees, and to ask that they may be removed from being Trustees, on the ground of their being improper persons. I do not think I have power to remove them on this account, holding them as I do to be Trustees; although, if I were appointing new Trustees, I should have little difficulty in saying I would not appoint those gentlemen, considering the position they now hold. I have no doubt some of them have joined congregations opposed to the view of the present Trustees.

Then comes a question that has occasioned some difficulty,—What is to be done with regard to these gentlemen, and with regard to their costs which have been incurred in the course of this litigation. Unquestionably, it seems to me to be a very unfortunate thing, that this litigation should have been thought necessary at the present moment. I most entirely concur, in the first instance, with the observation with which Lord Lyndhurst prefaces his Judgment in Dr. Warren's case, in which he says, “I trust I may be permitted to express my regret that, in a Society so constituted, for such objects, with such motives, and with such feelings, dissensions of this description should have been introduced; and I must suggest whether it would not be advisable to make some endeavour for the interests of the Society, by some attempt towards accommodation, to put an end to those dissensions which have given rise to the present proceedings.” In every word of that I most entirely concur. In the present instance, it is very remarkable that the Trustees are ten in number against five, and that for sixty years the nomination

has gone on existing in the way the relators wish. I really do not understand, except that it has arisen from what was gathered partly from these proceedings, the existing contest in the Methodist Body with what is called the Reforming Methodists, I really cannot see what necessity there was for coming to the Court at the present moment, to aid these ten Trustees, who might clearly, by electing new Trustees under the Trust Deed, have even increased their majority by filling up the vacancies so as to make themselves fourteen out of nineteen. I say I cannot see what necessity there was for making this application to the Court, and I am obliged to ask, on the question of the costs,—Have the defendants occasioned the litigation? I cannot find that they have. They have been dragged into the litigation rather than having in any way occasioned it. For sixty years there has been no attempt to appoint, and there has been a strenuous refusal to execute any other Trust Deed, but I cannot hold that is a breach of trust in a Trustee. Finding that a trust exists in the deed, without any declaration of the necessity of making any other alteration in it, I cannot blame a Trustee for taking care to have his conveyance made to him in that usual form.

Mr. LITTLE—Perhaps your Honour has not had present to your mind the Trustees' meeting, at which the opposing Trustees did distinctly raise an objection to the appointment of the Conference Ministers.

The VICE-CHANCELLOR—There was a voting at that meeting.

Mr. LITTLE—There were two or three meetings of the Trustees, at which the question was distinctly raised by the opposing Trustees, and they claimed the right to exclude the Conference Ministers, and resolutions were passed at that meeting for that purpose.

The VICE-CHANCELLOR—I am obliged to you,—I certainly had omitted to consider that.

Mr. LITTLE—That appears to be so, and it is a very important part of the case.

Mr. CRAIG—It is not, I think, brought forward by the Information.

The VICE-CHANCELLOR—No, it is not in the Information, and further than that, so little does it appear to have been thought, even by the Relators themselves, that the defen-

dants raised the matter, that there was an application made to them to join in the views that were entertained by these parties after the Information was filed.

Mr. LITTLE—There are two questions which we thought material, one is set forth in the Information,—that is the resolution come to for the building of the chapel in 1835, that it should be settled according to the Conference plan.

The VICE-CHANCELLOR—That is in 1846.

Mr. LITTLE—We considered the Trustees were so favourable to the Information, that there was a pledge on the part of the Trustees to promote, on the sanction of the Society, the settlement of the chapel on the Conference plan. That was the principal object of this application to perform and keep good faith with the Society. The Trustees on the opposite side were parties to the resolution, by which the Trustees engaged to carry out that purpose, and we conceived that when we made them parties to the Information we were in good faith, and performing the obligation binding on us both. The Information was not framed in a hostile spirit to them. It was framed simply to carry out the arrangement, and if it had not been for the course taken on the other side there would have been something more fully stated, and the judgment of the Court would have been more deliberately called for upon those points.

The VICE CHANCELLOR: I am glad that Mr. Little has called my attention to those circumstances, for this reason, that it certainly removes the impression that I was under of there having been a certain degree of haste in these parties, who have every thing in their own hands at this moment, instead of further strengthening themselves, in coming forward before the Court to raise the question. However, it does appear that the question was likely to be raised, that the five dissentient Trustees evinced their intention to raise it as far as (being in a minority) they could have an opportunity of raising it. That was their view, and so far, in a certain sense, this information would be necessary; but still I have to consider the question of whether or not, in truth, I can visit the Trustees with costs, for it really comes to that, for insisting upon the trusts of a deed being literally carried into effect, to which trust they have succeeded in regular rotation. It would be extremely hard to say that they have not a right to raise that question. I confess I do not affect to have any doubt in my own mind. I do not wish to

weaken anything that I have said, by throwing out any suggestion, that there is a doubt on my own mind upon the true construction of this deed, and that which ought to be the future mode of arranging the affairs of this charity ; but it is a different thing my saying that, after having had the benefit of having it fully argued by Counsel or both sides, and all the materials placed before me for arriving at that conclusion, and saying that I can visit with, or even deprive of costs, gentlemen who come and say, we come here and argue upon the literal construction of the deed. We say the whole thing can be effected by the deed under which we are regulated, and we come here with the impression that we are unable so to do and that we have a right to have it so construed. No doubt there are or may be other motives and other views in operation, on the minds of these gentlemen, but I think I should act very wrong, even if I were to allow myself to be influenced on a question of costs, by motives which moved these parties to stand on their strict legal rights. I cannot help thinking, that any person appointed to the situation of Trustee must have a right to say, we stand upon the literal construction of the deed :—We are arguing upon that literal construction ; and more especially, as it is not a construction set up for the first time ;—it is a construction that has been set up and insisted upon by some of their predecessors from 1782 downwards, down to 1835, when the Trustees were appointed. There have always been persons who had these views, even before these unfortunate reform disputes had arisen,—even in the time of Wesley himself, and in the presence of their great Founder, there were persons who maintained this was the right construction that ought to be applied, and, looking to what is the literal effect of the deed, it is difficult for me to say (not quite approving of another motive that may be behind,) they have not a right to have it sifted and to have it argued. The consequence no doubt is most unfortunate to the particular charity. I am afraid if I give them their costs, they must have their full costs of Trustees as between solicitor and client, and it will so far diminish the funds of this Society,—a consequence that Mr. Wesley probably, as well for Christian peace as for other reasons, was desirous to avoid, and thought the building of another chapel might be the preferable course to adopt.

Now I will state what the result is. I have written my decree, and the decree which I shall pronounce is this. It appearing to the Court that at the date of the indenture of the 3rd day of December, 1751, in the pleadings mentioned, the building called the new Meeting House, therein mentioned, situate at Birstal, in the county of York, was erected by and for the use of a society, originally formed under the ministry of John Nelson in the pleadings mentioned, and that at the date of the said indenture such society had been united to, and formed part of, a larger association, organised by the Rev. John Wesley, and by him styled "the People called Methodists," and that such larger association consisted of societies, several of which were respectively united together in Circuits, and to each of such Circuits travelling Preachers were from time appointed to minister in the Chapels of the Circuit, one of which Preachers was styled the Assistant, and was appointed to take charge of the Societies in the Circuit, (I here quote the very words,) and of the other Preachers therein, and that such travelling Preachers alone performed the regular ministrations and services in the said Chapels of the Circuit; and it further appearing that, at the date of the said indenture, the said Society of Birstal was united with several other Societies in the Circuit, called the Birstal Circuit, — Declare that, according to the true intent and meaning of the said indenture, the Preacher or Minister therein referred to, and directed to be appointed as therein mentioned, was intended to be and ought at all times to be one of the Preachers of the Circuit of which the said Society of Birstal may form part.

All that first part goes to bring in all the co-existing facts, and to interpret the deed, treating it as a good deed by those facts. The subsequent part of the decree refers to the alterations necessary in consequence of the altered circumstances. — And it further appearing to the Court, that the said Circuit Preachers, and in particular of the Birstal Circuit, were, at and before the date of the said indenture, and at all times thereafter during the lifetime of the said John Wesley, appointed either by the said John Wesley, with the advice of the said Conference, or by the said Conference presided over by the said John Wesley, and that since the death of the said John Wesley the appointment of all the Circuit

Preachers, and in particular of the Preachers in the said Birstal Circuit, has been made and that according to the rules and regulations of the said people called Methodists, such appointment ought to be made by the said Conference only,—Declare, that the trusts contained in the said Indenture, with reference to the appointment of a Preacher in the said chapel after the decease of the survivor of John Wesley, Charles Wesley and William Grimshaw, therein mentioned by the major part of the Trustees for the time being of the said Indenture, cannot be carried into effect, consistently with the due appointment of such Preacher or Minister, as by the said indenture was intended to be provided for the said chapel, and that the said trust premises ought at all times to be held by the Trustees for the time being, acting under the said indenture, upon trust to permit and suffer such persons respectively to be preachers or Ministers of the said Birstal Circuit, as shall, from time to time, be duly appointed by the said Conference for that purpose, to have and enjoy the free use and benefit of the said trust premises.

I propose to make a Declaration as to the whole effect of that Deed. Then declare that the indenture of the 8th day of May, 1782, in the pleadings mentioned, so far as it purports in any way to vary the trusts of the said indenture of the 3rd day of December, 1751, contained with reference to the nomination and appointment of Trustees under such indenture, or with reference to the nomination and appointment of the Minister or preacher, or so far as it purports to confer on the persons therein named or described the power of removing or suspending any preacher or Minister, is void and of no effect. Anything that can be suggested upon the frame of the decree I shall be happy to hear, when it is written out and made clear. Then declare that the hereditaments and premises comprised in and conveyed by the several indentures of the 4th and 5th December, 1809, and the 11th and 12th August, 1812, in the pleadings mentioned, and whereof no trusts were declared at the date of the said conveyances respectively, and also the hereditaments comprised in and conveyed by the indenture of the 25th day of April, 1843, in the pleadings mentioned, having been respectively purchased by and for the benefit of the members of the said Society of Birstal, and annexed to the said premises comprised in the said indenture of the

3rd day of December, 1751, became subject to the same trusts as are declared of the said premises comprised in the said last mentioned indenture.

Declare that the indenture of the 8th day of September, 1835, and indenture of the 25th day of April, 1843, respectively, so far as they purport to declare any trusts of the property conveyed by the said indentures of the 3rd day of December, 1751, the 5th day of December, 1809, and the 11th and 12th August, 1812, and the 25th April, 1843, or any of them inconsistent with the trusts of the said indenture of the 3rd day of December, 1751, are respectively void and of no effect. That would leave the school standing, as not being inconsistent with those trusts.

Mr. LITTLE :—With regard to the general purposes of the Trust Deed, what we proposed by the Notice of Motion for the Decree, your Honour will remember, was this —

The VICE-CHANCELLOR :—For the purpose of mortgaging and so on. I feel great difficulty upon that, thinking, as I do, that the original deed may stand. If I thought the original deed failed altogether, then the direction would be to frame a scheme for a new deed for a new administration of the charity ; but there not being any trust for sale or mortgage, I feel a difficulty in introducing it now.

Mr. LITTLE :—There being no trust for the administration of pew-rents, but there are other matters.

The VICE-CHANCELLOR :—The pew rents are to be held and enjoyed by the Minister for the time being.

Mr. LITTLE :—There is no trust in the deed of 1751 which limits the destination of the pew-rents. Perhaps your Honour would let us have an opportunity of considering it.

The VICE-CHANCELLOR—If you would suggest anything of that kind, I should be very glad.

Mr. JAMES—These are not matters on which any difficulties arise. I appeared for the majority of the Trustees ; Mr. Craig appeared for the minority. These are matters on which no contest arose. They were rather things on which there was a defect in the original deed.

The VICE-CHANCELLOR—If I can hold it to be defective, I shall be glad.

Mr. CRAIG—No defects have been pointed out that would lead to another discussion. I do not think there is any defect in that respect.

The VICE-CHANCELLOR—There is no defect about the pew-rents—the premises are to be held and enjoyed by the Preacher—it does not say he shall have the rents and profits.

Mr. CRAIG—I believe there are a great many Methodist Chapel Deeds in which the expenditure is not regulated.

Mr. LITTLE—That is a question that would require consideration.

The VICE-CHANCELLOR—Then, I say, appoint new Trustees so be named in lieu of the deceased Trustees, and I mean to name them at once, and I should name those four new Trustees you suggested.

Mr. LITTLE—And there have been two vacancies since the Notice of Motion was given.

The VICE-CHANCELLOR—That can be brought before the Court on affidavit.

Mr. CRAIG—If affidavits are to be made as to the fitness of persons instead of these two we have an opportunity of answering them.

The VICE-CHANCELLOR—I have no hesitation in selecting those as to whom the affidavits are already made.

Mr. CRAIG—I think from recollection there were affidavits as to four.

The VICE-CHANCELLOR—Then I have said—Tax all parties their costs, as between solicitor and client, and direct the same to be raised and paid by the Trustees, by mortgage of the trust premises, with liberty to apply. I can do that by decree, although there is no power in the deed to do it. It may be a necessary part of the administration of the trust.

Mr. JAMES—I am for the Trustees, and I want to protect the property. I suppose the costs must be as between solicitor and client. I do not know whether that includes every luxury that may have been indulged in.

The VICE-CHANCELLOR—That is for the taxing-master.

Mr. CRAIG—Your Honour only gives costs as between solicitor and client,—not costs, charges, and expenses.

The VICE-CHANCELLOR—Only the costs of the suit.

Mr. CRAIG—Then your Honour accedes to what Mr. Little asks, that the matter should be spoken to upon the minutes?

The VICE-CHANCELLOR—Only as to those points which are left open. I have not entirely concluded in my own mind whether the pew-rents can be dealt with.

Mr. CRAIG — Does your Honour mean that to be the subject of discussion ?

The VICE-CHANCELLOR — The question Mr. Little proposes is, to have some direction as to the application of the pew-rents, and to introduce powers of raising money.

Mr. CRAIG — That would raise questions that have not been at all discussed at your Honour's bar,—they have not been raised by the information.

Mr. LITTLE — I think all those questions were distinctly raised.

The VICE-CHANCELLOR — It raised the question of a scheme.

Mr. CRAIG — It raised the question generally, whether or not the trusts of this deed should not be assimilated to the trusts of the Model Deed.

The VICE-CHANCELLOR — The Model Deed is merely thrown in, as an example, if a scheme be directed. They say the Court has throughout taken the Model Deed.

Mr. CRAIG — Suppose it is confined to a scheme, without reference to the Model Deed, I think I am in your Honour's recollection that there was no discussion at the time the case was argued, as to whether any regulation should be made by the Court for the application of the pew-rents. If there is to be, we shall be glad to know what the application is, that we may come prepared with a supplemental argument upon the whole of that. I believe there has been no practical difficulty,—I do not think that even the affidavits suggest a practical difficulty.

The VICE-CHANCELLOR — What I have done is simply this. Perhaps one has exceeded the view of Lord Justice Knight Bruce even in that case, and which the present Lord Chancellor did not wholly accede to, as to the power of the whole Body altering anything not inconsistent with the deed. I had thought, if this decree stands in the present form, it would leave a good deal of the question open about the application of the pew-rents. I have said those things "inconsistent" with the Trust Deed. Now, it may be a question, whether the application of pew-rents is inconsistent [with the Trust Deed,—whether they may not have a power of engrafting on the original deed that which is not inconsistent with it, and the deed of 1782 does provide for the application of the pew-rents.

Mr. LITTLE—The view that Lord Justice Knight Bruce took was, that the Trustees, acting concurrently with the members of the Society, might lay down the regulations for those purposes; but what we submit is, that the case now being before the Court on motion for a decree, and which asks you to adopt the Model Deed, and evidence addressed to that point not combated on the other side, and which regulates all these matters, which are matters that on the face of the case may be provided for in some way, that that question should now be disposed of so as to be removed from the sphere of discussion hereafter, since it is quite clear, that unanimity cannot be secured amongst the Trustees. Now, I submit to your Honour, that there is quite sufficient upon the face of the information, upon the notice of motion for the decree, and the evidence before the Court, to call upon the Court at once to dispose of this question, and to save the charity from the expense and annoyance of future litigation, which it is quite obvious will be taken by the dissentient Trustees. Now the notice of motion for a decree, your Honour will observe, does not simply ask that you should adopt the Model Deed, but it asks if you do not adopt the Model Deed, that there should be a reference to Chambers to settle a scheme. If it had gone to Chambers, unquestionably the question of pew-rents and raising the moneys would have been matters to be discussed. It appears on the face of the Information, that the Trustees have contracted a debt, for which they are personally liable. That is a matter which it is quite clear ought to be provided for now; what I should have thought would have been a convenient course, subject to your Honour's approbation, is this, that, as you have expressed your view most distinctly upon two points, namely, the point as to the appointment of Ministers, and as to the appointment of Trustees, that it should be a subject for consideration, on the framing of the decree on the Minutes, whether any other provisions of the Model Deed, except the terms from which you dissent, might not properly be incorporated for the purpose of regulating the future administration of the property, excepting from the operation of the decree the provision with regard to the Trusteeship, as to which your opinion has been expressed. It appears to me, in all other particulars, the Model Deed

will furnish a means of solving those difficulties that must hereafter arise.

The VICE-CHANCELLOR—With reference to a Charity there is always this observation to be made, that if the funds increase, or any other circumstances should occur with reference to any charity, it is always open to the parties to come here to have anything not inconsistent with the deed, and any regulation adopted which may provide for the due administration of these funds. For instance, in this particular case, the Pew-rents are not provided for. That is an increase of the charity estate. There is always a power inherent in this Court in charities to say, what shall be done in that altered state of circumstances, leaving the old deed intact. That is the view I should take of it, in considering whether it might not be right—and it might be spoken to on the Minutes to see whether, with reference to the altered state of the charity, anything can be done.

Mr. CRAIG—That might be done without any new deed or any new scheme.

The VICE-CHANCELLOR—I am not prepared to have a new deed.

Mr. LITTLE—Perhaps your Honour would consider it a convenient course, if a day were named on which the case might be spoken to on the Minutes. In the meantime, we will furnish to the other side the proposition that we consider to be fitting for the purpose of meeting this question.

The VICE-CHANCELLOR—That would be the better way. At the same time, I wish the parties to know my view at present is this, that I should rather deal with it as a dealing by the Court in its general jurisdiction of settling what ought to be done with reference to the particular property generally, than with reference to settling any new deed.

Mr. JAMES—The whole matter is before your Honour on the Information. You are not bound by the prayer of the Information.

The VICE-CHANCELLOR—All that it is necessary to guard against is surprise.

Mr. CRAIG—Would it not be better that the Minutes should be drawn up according to the terms your Honour has written down, when they are delivered out by the Regis-

trar, and then that my friend Mr. Little's client should give us a notice of motion to vary the Minutes.

The VICE-CHANCELLOR—I do not think anything will be gained by that. I have dealt with you as being fair Trustees, and I hope you will maintain that character, and therefore really anything that is for the benefit of the charity should not be objected to for the sake of objection.

Mr. CRAIG—The only object I have is, to have sufficient opportunity of considering, with reference to the large mass of evidence before the Court, whether or not the circumstances of the case are such as to make it proper that there should be such an alteration in the application of the pew-rents.

The VICE-CHANCELLOR—Take the first cause day after term.

Mr. CRAIG—Or an earlier day. I have no objection to an earlier day, provided there is a sufficient interval between their communication to us of what they desire, and the time it is spoken to.

The VICE-CHANCELLOR—They will take care to do that. I will have these Minutes copied out, and I shall be glad to receive any suggestion before it is formally introduced into the Registrar's Minutes.

Mr. JAMES—I appear for the President and Secretary of the Conference among other defendants. Since the matter was argued, and before the Judgment, they have been changed. I appear for the new President and new Secretary, to cure any difficulty that might possibly arise from that circumstance.

Mr. CRAIG—I do not know whether they have their costs.

The VICE-CHANCELLOR—All the defendants must have their costs.

Mr. CRAIG—Before it comes on again, you will also make an affidavit as to the fitness of the two Trustees to supply the vacancy of those who are dead.

Mr. LITTLE—We have made those affidavits, and you have them.

Mr. CRAIG—Then it stands for the first Cause Day after Term.

